UNIVERSITY OF PENNSYLVANIA

THE LIBERALIZATION OF THE LIFE INSURANCE CONTRACT

GEORGE L. AMRHEIN

A THESIS
IN ECONOMICS
PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

PHILADELPHIA
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PREFACE

The policy contract is the backbone of the institution of life insurance. With the constantly growing demand for life insurance protection and its increasing use by all members of the community, it is more than ever desirable that those engaged in the business have a thorough knowledge of the provisions of the contract and a clear understanding of the rights which it grants and of the liabilities which it imposes. While many articles bearing on the problem have appeared, nowhere is there a description of the evolution of the policy sufficiently comprehensive to permit an interpretation of the changes which have taken place.

The purpose of this thesis is to trace the development of the various provisions of the life insurance contract, to analyze the reasons for the modifications which have been introduced, and to determine to what extent, if any, the policyholder's status has been improved. Particular emphasis is placed upon the policy content, its interpretation, and its liberalization. In considering liberality, however, the discussion is confined to that which arose out of changes in the contract itself, together with those which were the result of court decisions and legislative enactments affecting it. Without doubt many additional factors contribute to liberality. The privilege of a free periodic medical examination, for example, is a distinct advantage to the insured. Again, anything that reduces the cost of a given contract or that increases the security behind it may be considered an increase in liberality, but no attempt has been made to discuss questions of this nature, since they are beyond the scope of the present study.

The evolution of the policy from the comparatively simple form of the early period to the comprehensive contract of today, devoted, not as formerly, to clauses limiting coverage, but to a statement and explanation of benefits and options, has taken place primarily as a result of three factors, namely (1) voluntary concessions by the companies arising out of a sense of fair play or a desire for business, (2) judicial interpretation, with subsequent modification, of certain rules of law as applied to insurance contracts, and (3) legislative action for the better protection of policyholders. Although it is difficult to evaluate the individual importance of these factors, it may be pointed out that competition among companies has been an exceedingly important influence in promoting liberalization.

The chronological approach was discarded as unsatisfactory, since it would involve frequent repetition, and would be inconvenient for the reader interested in one specific clause. The plan of treatment, therefore, is one in which each provision is discussed in detail from the time of its origin. It was thought desirable to furnish a background by including a rather detailed account of the origin and development of life insurance both abroad and in this country. Such a foundation is useful in giving the reader a concept of the vital changes that have occurred in fundamental purposes and methods, and in showing how many developments of the policy were the results of such changes. Following this are a number of chapters of a general nature, treating of government regulation, standard policies, the nature of the life policy, the general rules underlying its construction, insurable interest, and assignment. With Chapter VI begins the study of the individual clauses in the policy. For convenience of analysis they are discussed under five heads, *viz.,* those relating to (1) the writing of the policy, including the law of agency, the application, parol testimony, concealment and misrepresentation, incontestability, and the payment of the premium, (2) policy restrictions, (3) the termination of the policy, (4) the rights of the beneficiary, and (5) clauses affording additional protection.

The author acknowledges with grateful appreciation the generosity of the officials both of life insurance companies and of state insurance departments in supplying much valuable information. His indebtedness to numerous authorities is indicated in the footnotes. Special acknowledgment is due Dr. S. S. Huebner, Dr. C. K. Knight, Dr. C. A. Kulp, Dr. H. J. Loman, Professors of Insurance at the University of Pennsylvania; Mr. E. Paul Huttinger, Manager of Training of the Penn Mutual Life Insurance Company; and Irvin Bendiner, Esq., all of whom read the manuscript and offered many valuable criticisms and suggestions.

GEORGE L. AMRHEIN.

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The following table presents a guide to the abbreviations used in the footnotes:

J. C. I. I.	—Journal of the Chartered Insurance Institute.
J. F. I. I.	—Journal of the Federation of Insurance Institutes of Great Britain and Ireland.
J. I. A.	—Journal of the Institute of Actuaries.
P. A. L. C.	—Proceedings of the American Life Convention.
P. A. L. C., L. S.	—Proceedings of the American Life Convention, Legal Section.
P. A. L. I. C.	—Proceedings of the Association of Life Insurance Counsel.
P. A. L. I. M. D.	—Proceedings of the Association of Life Insurance Medical Directors.
P. A. L. I. P.	—Proceedings of the Association of Life Insurance Presidents.
P. I. I. T.	—Proceedings of the Insurance Institute of Toronto.
P. N. C. I. C.	—Proceedings of the National Convention of Insurance Commissioners.
T. A. S. A.	—Transactions of the Actuarial Society of America.

CHAPTER I

THE ORIGIN AND DEVELOPMENT OF INSURANCE

The Experimental Stage.

The origin of insurance is lost in antiquity.[1] Various references to provisions for some kind of indemnity to alleviate unexpected loss or distress are found in the writings of the ancients. Perhaps the earliest of these is revealed in the *Code of Hammurabi,* which imposed upon the state liability for certain losses.[2] In a later period there exist some of the historic and traditionary reminiscences found in Hebrew writings, and preserved chiefly in the *Babylonian Talmud* and its supplementary history, the *Tosefta Baba Kama.*[3] Some writers[4] have ascribed to insurance a divine origin, citing the Bible[5] as their authority. An institution for the insurance of slaves seems to have existed in ancient Greece.[6] However much the idea of mitigation of loss may be present in the above instances, they can hardly be said to constitute systems of insurance as understood in modern times. Life insurance is the outgrowth of the activities of marine underwriters on the one hand, and of the efforts of groups such as the gilds to provide for the helpless, on the other.

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[1] Homans, Sheppard, "Life Insurance," *One Hundred Years of American Commerce,* Chauncey M. Depew, Ed., D. O. Haynes and Co., N. Y. (1895), p. 92.

[2] *The Oldest Code of Laws in the World. The Code of Laws Promulgated by Hammurabi, King of Babylon, B. C. 2285-2242.* Translated by C. H. W. Johns, T. and T. Clark, Edinburgh (1903), pp. 6 and 7: "23. § If the brigand has not been caught, the man who has been despoiled shall recount before God what he has lost, and the city and governor in whose land and district the brigandage took place shall render back to him whatever of his was lost.

"§ 24. If it was a life, the city and governor shall pay one mina of silver to his people."

[3] Clarke, J. L., "History of the Massachusetts Insurance Department," *Mass. Ins. Rep.* (1876), vol. 21, pt. 2, p. 192, *et. seq.* See also "Insurance 500 to 700 B. C.," *Insurance Monitor* (1876), vol. 24, pp. 753, 754.

[4] Talmage, Rev. T. De Witt, *The Crime of Not Insuring,* Spectator Co., N. Y. (no date), p. 1: "We are told that Rev. Dr. Anhate, of Lincolnshire, England, originated the first life-insurance company, in 1698. No; it is as old as the corn-cribs of Egypt, and God himself was the author and originator. 'Now,' said Joseph, 'let us take one-fifth of the corn crop of the seven prosperous years, and keep it as a provision for the seven years in which there shall be no corn crop.'"

[5] *Genesis,* Ch. 41:34.

[6] The idea first occurred to Antigenes of Rhodes in the time of Alexander the Great, 356-323 B. C., "who undertook, for a yearly contribution of eight drachmas for each slave that was in the army, to make good his price, as estimated by the owner at the time of elopement." *Palgraves Dictionary of Political Economy,* Henry Higgs, Ed., Macmillan, London (1923), 3 vols., vol. 2, p. 409, citing A. Bockh, *Public Economy of Athens.*

1. *Marine Underwriters.*

It is generally admitted that in its origin marine insurance preceded life insurance.[7] Quite naturally, when the latter was introduced, it was underwritten by marine insurers,[8] on forms similar to the marine policy.[9] The lives insured were most frequently those of masters of vessels and those of merchants traveling with their goods. The hazards covered were chiefly those of death, and captivity by pirates desirous of obtaining ransom.[10] Life insurance during this period was still in the experimental stage.[11]

(a) Knowledge of the Ancients.

Whether or not marine insurance was known and practiced by the ancients has been the subject of careful analysis by many brilliant and thorough students of insurance. Those who contend that early peoples were familiar with the principles of insurance rest their case mainly upon certain passages found in the histories of Livy and Suetonius and in the letters of Cicero.[12] Among the foremost authorities holding this view may be mentioned Malynes,[13] Anderson,[14] Emerigon,[15] and Justice Duer.[16] On the other hand many writers attribute other meanings to these passages and conclude that insurance was unknown among the ancients. Upholding this view are Grotius and Bynkershoek in Europe, Magens,[17] Park,[18] Marshall,[19] and Hopkins in England, and Knight[20] and Vance[21] in

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[7] Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1885-86), vol. 25, p. 114.

[8] Homans, *opus cit.,* p. 92.

[9] Walford, "History of Life Assurance in the United Kingdom," *opus cit.,* vol. 25, p. 114.

[10] *Ibid.,* p. 114.

[11] *Ibid.,* p. 114. Discussing life insurance, Walford writes: "The development of the business has extended over some three of four centuries, perhaps more. It has passed through three distinct phases, as (1) The Experimental Period; (2) The Speculative or Transitional Period; (3) The Period of Scientific Exactitude."

[12] Vance, W. R., "The Early History of Insurance Law" (1908), *8 Col. L. R.* 1. The passages referred to are Livy, lib. 23, c. 49; lib. 25, c. 3; Suetonius, lib. 5, c. 18; Cicero, Epist. ad Fam., lib. II, Epist. 17.

[13] Malynes, Gerard, *Consvetvdo, Vel Lex Mercatoria or The Antient Law-Merchant,* London (1636), p. 105. Malynes credits Claudius Caesar, the fifth Roman Emperor [41 to 54 A. D.] with introducing insurance. "This Claudius did bring to this most laudable Custome of Assurances, whereby the danger and aduenture of goods is diuided, reparted, and borne by many persons, consenting, and agreed vpon betweene them, what part euery man will bee contented to assure, make good and pay if any losse or casualtie should happen to the goods aduentured, or to be made aduentured at the Seas, as also by Land; to the end that merchants might enlarge and augment their Trafficke and Commerce, and not aduenture all in one Bottome to their losse and ouerthrow, but that the same might be reparted and answered for by many."

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[14] Anderson, Adam, *An Historical and Chronological Deduction of the Origin of Commerce.* Rev. Ed., London (1787), 4 vols., vol. 1, p. 30: "A. D. 43. Seutonius conjectures, that the Emperor Claudius was the first contriver of insurances on ships and merchandize." Vol. 2, p. 203: "Assurance, or insurance of ships and merchandize on the seas, is of great antiquity, even as far back as the reign of the Emperor Claudius Caesar."

[15] Emerigon, B. M., *A Treatise on Insurances,* first pub. in 1783, trans. from the French by Samuel Meredith, London and Boston (1850). For a discussion of early insurance history among the ancients see pp. xxxi-xli.

[16] Duer, John, *The Law and Practice of Marine Insurance.* N. Y. (1845), vol. 1, p. 14: "The judicious Emerigon, in the preface to his learned and accurate work on insurance and maritime loans, asserts that traces of marine insurance are to be found in Roman History, and he cites two passages from Livy, and one from Suetonius, in proof of his assertion. . . . It is indeed said by the able writers, to whose observations I am attempting to reply, that Emerigon has strangely misapplied the passages he has quoted, and that properly understood, they have no relation to insurance; but to the justice of the criticism I am unable to assent." Vol. 1, p. 23: "It is not then a necessary conclusion from the silence of the Roman law, that marine insurance was unknown." For the argument in full, upholding Emerigon, see vol. 1, pp. 15-27.

[17] Magens, Nicolas, *An Essay on Insurances,* London (1755), 2 vols. vol. 1, p. 1. Ancient insurance "cannot be paralleled with the Insurance which we treat of; which is a Matter of Choice, and for Conveniency's Sake, between private Persons."

[18] Park, Sir James A., *Marine Insurances,* 8th Ed., Saunders and Benning, London (1842), 2 vols., vol. I, p. lxiii: "From what has been said, it appears evident that the *Romans* had no knowledge of insurances; in addition to which, both Grotius [Grotius de Jure Belli, lib. 2, c. 12, s. 3] and Bynkershoek [Bynk. Quaest. Juris Publici, lib. I, cap. 21] have expressly declared that among the ancients the contract was unknown." Vol. I, pp. lxx, lxxi. "One thing, however, is clear, that neither the *Consolato del Mare,* nor the *Amalfitan* Code, upon which it is founded, contains anything upon insurance law, so that we have here another confirmation of the idea, that this contract was not a production of very ancient times." For the complete discussion, see vol. I, pp. xliii-xcv. The first edition of this scholarly work, much quoted in early insurance cases, was published in 1786.

[19] Marshall, Samuel, *A Treatise on the Law of Insurance,* 1st Am., from the Eng. Ed., Boston (1805), pp. 4-8. If the ancients knew of insurance it was very different from that practiced in later times.

[20] Knight, C. K., *The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 9: "While the first contracts involving payments in the event of death were entered into by masters of ships, no primary source reveals such a practice until the sixteenth century. Hence, if lack of evidence showing the existence of life insurance indicates its non-existence it was certainly unknown to the ancients."

[21] Vance, W. R., *Handbook of the Law of Insurance,* 2d Ed., West Pub. Co., St. Paul (1930), p. 8.

America.[22] The truth very likely lies somewhere between; although transactions involving some insurance principles no doubt occurred, such as, for example, the execution of bottomry bonds,[23] there is no positive evidence that insurance as it is understood today existed before the middle ages.

(b) Medieval Use.

The Italians were the great commercial people of the late medieval period. There seems to be little doubt that the foundations of modern marine insurance were laid in Italy, and that its use was extended to other continental countries and to England by the trading companies of the Lombards.[24] Duer [25] attributes its invention to the Jews in France, but Vance [26] regards this as "inherently improbable." The date of its introduction is uncertain. Duer [27] fixes it at the close of the twelfth or the beginning of the thirteenth century. Citing as his authority Enrico Bensa's *Il Contratto di Assecuratione nel Medio Evo,* Vance states: [28] "Among the records of the Florentine Chamber of Commerce are the books of Francesco del Bene and Company, of Florence, which set forth commercial transactions dating from A. D. 1318." The cost of insuring goods in transit is frequently found, showing that it was customary. "This fact," he continues, "justifies the conclusion that among these Italian cities insurance had been in use many years before the date of the entry in these old Florentine books."

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[22] Vance, "The Early History of Insurance Law," *opus cit.,* p. 3. If given a broad meaning, insurance is unquestionably "as old as human society itself." P. 6: "We therefore conclude that the principle of insurance, considered as an arrangement whereby a person subjected to any peril may be indemnified for a loss on account of such peril, was known to the ancients and made use of by them to a very considerable extent; but that commercial insurance, as practiced so extensively in modern times, was either unknown to them or little used."

[23] Martin, Frederick, *The History of Lloyd's and of Marine Insurance in Great Britain,* Macmillan, London (1876), pp. 2-5. Under Babylonian law the carrier was practically the insurer for the goods transported. Zane, J. M., *The Story of Law,* Ives Washburn, N. Y. (1927), p. 81. "On consignments to caravans the freight was paid in advance and the carrier was responsible at all events, except for acts of the public enemy."

[24] Marshall, *opus cit.,* p. 10. Some writers present evidence of the existence of both fire and livestock insurance in Iceland as early as the twelfth century. Jack, A. F., *An Introduction to the History of Life Assurance,* London (1912), p. 63, footnote.

[25] Duer, *opus cit.,* vol. I, pp. 29, 30: "Giovanni Villani is the most justly celebrated of the early Florentine historians. . . . It is upon the authority of this historian that Cleirac, the French jurist . . . founds his assertion, that insurance was invented by the Jews, who, when expelled from France, by Philip Augustus, in the year 1182, found a refuge in Italy," thus introducing their idea to the Italians.

[26] Vance, "The Early History of Insurance Law," *opus cit.,* p. 7, footnote.

[27] Duer, *opus cit.,* vol. I, p. 28. For his complete discussion see pp. 28-55.

[28] Vance, "The Early History of Insurance Law," *opus cit.,* p. 7.

(c) Early Regulation.

As early as 1411, insurance was the subject of legislation among the Venetians.[29] The oldest foreign ordinances on the subject are those of Barcelona, enacted in 1435,[30] but Duer[31] believes that there is scarcely any doubt that insurance existed at least a century earlier.

(d) Early Life Insurance.

Turning now from marine to life insurance, it is equally as difficult to establish the date of origin. Vance gives evidence[32] that life insurance was practiced by the Italians in the fourteenth century, but was soon prohibited on the grounds of wagering.[33] In a work called *Le Guidon de la Mer,*[34] the first treatise in any modern language on insurance,[35] compiled between 1556 and 1584,[36] we get the first glimpse of the nature of life insurance as carried on in Europe in the later middle ages. The following translation of a passage[37] from the chapter[38] dealing with this subject indicates that it was a familiar and well-established custom in certain countries. "Another kind of insurance is made by other nations upon the life of men, in case they decease, while away on a journey, to pay certain sums to their heirs or creditors. Even the creditors will be able to have their debts insured, if their debtor goes from one country to another; the same can be done for those who have rents or pensions, in case they decease;—namely: to continue for so many years to their heirs, such pension or rent as is due them. All of which are stipulations which have been proven damaging to good morals and customs, and out of which there resulted endless abuse and deception, for which reason they have been forced to abolish and forbid the above-mentioned practices, which will also be prohibited and forbidden in this country (France)."

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[29] *Ibid.*, p. 9.

[30] Insurance Company *v.* Dunham (1870), 11 Wall. (U. S.), 1, 33. Mr. Justice Bradley, in reviewing the history of insurance states that express regulations of marine insurance contracts "do not appear in any code or compilation of laws earlier than the commencement of the fifteenth century. The earliest which Pardessus [2 Pardessus, Lois Maritimes, 369, 6 Id. 303] was able to find were those contained in the Ordinances of Barcelona, A. D. 1435; of Venice, A. D. 1468; of Florence, A. D. 1523; of Antwerp, A. D. 1537, etc." See Vance, "The Early History of Insurance Law," *opus cit.*, p. 10. For a comprehensive description and analysis of the various compilations of laws, including "Il Consolato del Mare," Eleventh Century, the laws or judgments of Oleron, 1266, the laws of Wisby (an ancient city of Sweden), close of Thirteenth Century, the laws of the Hansetowns, 1593 or 1597, and the Ordinance of the Marine, 1681, see Duer, *opus cit.*, vol. I, Introductory Discourse, Lecture II. Anderson, *opus cit.*, vol. 2, p. 203, states, without citing authority: "The sea laws of Oleron, as far back as in the year 1194, treat of it (insurance)," but there is evidence to the contrary. See Park, *opus cit.*, vol. I, p. lxxiii.

[31] Duer, *opus cit.*, vol. I, p. 35.

[32] Goldschmidt, *Handbuch des Handelsrechts* (1891), pp. 382, 383.

[33] Vance, "Handbook of the Law of Insurance," *opus cit.*, p. 21, footnote 49.

[34] The text of this treatise was first published in Cleirac, E., *Us et Coustumes de la Mer* (1st Ed., 1647), Bourdeaux (1661), p. 215 *et seq.* "Le Guidon" comprises Part II and consists of twenty chapters. Its title is as follows, p. 213: "Des Us et Coustumes De La Mer: Des contrats Maritimes et Commerce Naval Contenant Le Guidon pour ceux qui font marchandise, & qui mettent à la mer avec les asseurances d' Anvers & d' Amsterdam." Cleirac tells us that it was composed for the benefit of the merchant traders of Rouen and is so complete in itself, that it fully explains all that is necessary to know on the subject of marine contracts and naval commerce; and that nothing is lacking but the author's name.

(e) Introduction into England.

The exact date of the introduction of life insurance into England is unknown,[39] "probably because it came into use by slow and imperceptible degrees."[40] Whether insurance was in use there before its adoption in the countries of Europe is open to question.[41] Nevertheless, at the time of the appearance of Malynes *Lex Mercatoria,* in 1622, insurance, including that on the lives of men, was well established.[42] Lombard Street early became the center of the business.[43] As a matter of fact, the case of Emerson *c.* De Sallanova, decided in a court of admiralty in 1545 is the first positive evidence of an insurance transaction in England.[44] The oldest known English policy is dated September 20, 1547,[45] although a marine contract in Latin, written in Genoa in 1347, is the earliest policy still existing.[46]

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[35] Duer, *opus cit.*, vol. 1, p. 45.

[36] Emerigon, *opus cit.*, p. 157, footnote.

[37] Cleirac, *opus cit.*, pp. 327, 328.

[38] *Ibid.*, p. 325, ch. XVI, art. V.

[39] Marshall, *opus cit.*, p. 665.

[40] *Ibid.*, p. 665.

[41] In writing of the year 1560, Anderson, *opus cit.*, vol. 2, p. 108, quoting Louis Guicciardini's *Description of the Netherlands,* points out the importance of the trade between the Netherlands and England. The merchants on both sides are so sensible of its importance, he states, " . . . that they have fallen into a way of insuring their merchandize from losses at Sea by a joint contribution. This is the first instance we have met with, of *Insurance from Losses at Sea,* though probably in use before this time . . ." He further states, vol. 2, p. 203: "It seems to have been in use in England, upon the revival of commerce, somewhat earlier than on the continent. And Antwerp, though in its meridian glory, learned it from England." Malynes, *opus cit.*, p. 105: "This Custome comming to the knowledge of the inhabitants of Oleron was recorded and by them set downe for a Law, and practised to be obserued through all the Sea-coast Townes of France, and yet was first vsed in England, and after vs imitated by the Antuerpians, and all other Nations there inhabiting when that Citie did flourish." This was probably incorrect. Vance, "The Early History of Insurance Law," *opus cit.*, p. 11.

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[42] Malynes, *opus cit.,* p. 107: "Other Assurances are made vpon the liues of men, for diuers respects, some because their estate is meerely for terme of life, and if they haue children or friends to leaue some part of their estate vnto, they value their life at so many hundreth pounds, for one or more yeares, and cause that value to be assured at fiue, six, tenne or more for euery hundreth pounds, and if he doe depart this life within that time, the Assurors pay the money; as it happened of late, that one being ingaged for Sir Richard Martin Knight, Master of the Mint, caused 300ll to bee assured vpon the life of the said Sir Richard, being some ninetie yeares of age, and therefore gaue twentie and fiue pro centum to the Assurors: The Ancient Knight died within the yeare, and the said Assurers did pay the money. Also one master Kiddermaster hauing bought an office of the six Clerkes of the Chancery, and taken vp money of others, caused for their assurance for many yeares together two thousand pound to be assured vpon his life after foure and fiue in the hundreth, vtill he had payed that money; which is very commodious.

"Likewise a traueller vndertaking a Voyage to Jerusalem or Babylon, deliuering out money payable at his returne, will prouidently assure a summe of money vpon his life, either to secure some men that do furnish him with money to performe his Voyage, and to put forth the greater summe, or to leaue some meanes vnto his friends, if he should die & neuer return. So that this office is most necessary in all humane actions, and men cannot inuent or imagine any thing, but the value of it may be assured, as you may judge by the former examples."

[43] *Ibid.,* pp. 105, 106: "And whereas here in London, the meeting amongst merchants was in Lombard-street in London, as Aforesaid (so called, because certaine Italians out of Lombardie kept there a Pawne-house or Lombard, long before the Royall Exchange was builded by Sir Thomas Gresham knight) all the policies or writings of Assurances which then were, and now yet are made, do make mention, That it shall be in all things concerning the said Assurances, as was accustomed to be done in Lombard-street in London . . ." Anderson, *opus cit.,* vol. 2, p. 108. *Ibid.,* vol. 2, p. 203: "All the policies of insurances at Antwerp, which then were, and now [1622] yet are made, do make mention, that it shall be in all things concerning the said assurances, as was accustomed to be done in Lombard-street, in London; which is imitated also in other places of the Low Countries."

[44] "Select Pleas in the Court of Admiralty, vol. II, A. D. 1547-1602," *Publications of the Selden Society* (1897), vol. XI, p. lxvi. This was a claim upon an indemnity given against the withdrawal of a safe conduct by the King of France.

[45] Set forth in Italian with the English translation in Broke *c.* Maynard, *ibid.,* vol. XI, p. 47. A policy bearing the date Nov. 26, 1548, much better preserved, is found in Cavalchant *c.* Maynard, pp. 46, 47. This policy appears in both Italian and English and reads as follows:

(f) The First Life Policy.

The earliest life insurance policy of record has come down to us through incorporation in a judicial decision. Policies of the same nature were no doubt written prior to the one mentioned, but they have been lost, probably because there had been no dispute as to their terms.[47] The policy, dated June 18, 1583, and made in the "office of assurance" within the "Royall Exchange" is as follows:[48]

> In the name of god amen. Be it knowne vnto all men by theise presentes that Richard Martin Citizen and Alderman of London doth make assurance and causeth himself to be assured vpon the naturall life of William Gybbons Citizen and salter of London, for and during the space of xij monethes next ensuinge after the vnderwriting hearof by the assurers heareafter subscribed fullie to be complete and ended. The wch assurance wee the ꝑsons heareafter

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"In the name of God Amen the xxvjth daye of November 1548.

Thomas Cavalchant and John Gyralde and their company of London make themselves to be assured by the order and accompte of Paule Ciciny of Messena or of eny other what soever they be upon the ship called the Sancta Maria de Porto Salvo patron Matulyno de Maryny or how soo ever better she were called or patronysed upon a hundrethe peaces carseys and fryseys or eny other wares laden or to be laden in Hampton untyll they be arryved in Messena and discharged on lande in good saufty. And the assurers be content that this wrytinge be of as moche forse and strength as the best that ever was made or myghte be made in this Lombardstrete of London according to the order and customes whereof every oon that assureth as they that cause them to be assured or content to be bound And God sende the good shipp in saufty."

For various other marine policies including contemporary translations of French and Dutch policies, see pp. 47-59. For a statement of Crane *c.* Bell (1546) see *ibid.* (1892), vol. VI, pp. lxxviii, 129, 229. See also Magens, *opus cit.*, vol. 2. This contains "A Collection of all the Foreign Ordinances of Insurances, and Forms of Policies, translated into English, with Remarks on such Parts as are obscure or defective; all the English Acts of Parliament relating to Insurances, Shipwrecks, Salvages, and Insurance-Companies; the Forms of Policies and Bottomry Bonds; the Conditions of Insurances Against Fire, etc." Included are policies of Florence, 1523, Antwerp, 1563, and Cadiz, 1618. See vol. 1, p. 4. There is reason to believe that early contracts were sometimes verbal. Holdsworth, W. S., "The Early History of the Contract of Insurance" (1917), 17 *Col. L. R.* 85, 91.

[46] It is reproduced in Vance, "The Early History of Insurance Law," *opus cit.*, pp. 7, 8, footnote.

[47] Many of the records of insurance as well as policies were probably destroyed in the great fire of London in 1666. Walford, "History of Life Assurance in the United Kingdom," *opus cit.*, vol. 25, p. 119.

[48] British Museum. MSS. Lansdowne, No. 170, fo. 123 (Caesar Collections. Admiralty, etc.). Printed in *J. I. A.* (1870-72), vol. 16, pp. 420, 421.

named merchantes of this Citie of London for and in consideracõn of certeine currant money of England by vs received at the subscribing hereof, of the said Richard Martin after the rate of viij^{li} sterling ꝑ cent (whereof we acknowledg ourselves and everie of vs by these presentes trulie satisfied & paid) do take vpon vs to beare. And we do assuere by thiese presentes that the said William Gybbons (by what addicõn so euer he is or shalbe named or called) shall by Gods grace contynue in this his naturall lief for & during the space of xij monethes next ensuing after the vnderwriting heareof by everie of vs the assurers, or in default thereof everie of vs to satisfye content & paie or cause to be satisfied contented and payd vnto the said Richard Martin his executors administrators or assigns, all such severall sum̃es of money as we the assurers shall hereafter severally subscribe, promising and binding vs eche one for his owne part, our heiers executors & administrators by these presentes, That if it hapen (as god defend) the said William Gibbons to dye or decase out of this present world by any wayes or meanes whatsoever before the full end of the said xij monethes be expired, that then we our heiers, executors or assignes wthin two monethes next after true intimacõn thereof be to vs our heires executors or administrators lawfullye given, shall well and truly content and pay or cause to be contented and paied vnto the said Richard Martin his executors administrators or assigns all such sum̃e and sum̃es of money as by vs th'assurers shalbe heareafter severally subscribed wthout any further delaye: It is to be vnderstanded that this present writing is and shall bee of asmuch force, strength and effect, as the best and most surest pollicy or writing of assurance w^{ch} hath bene euer heretofore vsed to be made upon the life of any ꝑson in Lumbard Street, or nowe wthin the Roiall Exchange in London. And so the assurers be contented and doe ꝑmise and binde themselues and everie of them theire heiers executors and administrators by these presentes to th'assured his executors, administrators and assigns for the true ꝑformance of the premisses according to the vse and custome of the said street or Royall exchange: And in testimony of the truth the assurers have hearevnto severally subscribed their names and sum̃s of money assured. God send the said William Gibbons helth and long lief. yeven in the office of assurance wthin the Royall Exchange aforesaid the xviijth day of June 1583.

There follows a list of the underwriters[49] (some sixteen) with the amounts subscribed by each (approximately the sum of £383).

William Gibbons died upon May 29, 1584, but the underwriters refused to pay the claim on the ground that since each month should be considered as twenty-eight days, the policy had expired. After considering carefully the evidence the "Judges of the Admiraltie" decided in favor of the insured.

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[49] *Ibid.*, pp. 421-423.

It was ordered "That the said defendantes and euery of them shall before the feast of Thañunciation of the Virgin Mary nex ensuing, paie vnto the said complainant the severall som̃es of money specified in the said severall subscriptions vnto the said pollicy together wth the consideracõn for the forbearing of the same since the time of the said intimacõn according to the vsuall rate accustomed amongst merchantes." The decision was ratified by the "honorable privye Counsell" on March 14, 1587, and was "to be hereafter kept & observed in like cases of assurance."

A comparison of the above policy with one in use in Hamburg in 1731 is very interesting. The latter has distinctly a marine flavor.[50]

(g) Chambers and Courts of Insurance.

It was inevitable with the growth of insurance that disputes should occur more and more frequently. The first method of dealing with the problem was by establishing Chambers of Insurance.[51] While one of the customs brought with them by the Lombards was the settlement of mercantile disputes without recourse to the common law courts,[52] nevertheless the facilities for the settlement of insurance difficulties were unsatisfactory.[53] The merchant courts were without means to enforce their judgments, the admiralty courts were limited because of the restrictions, arising out of jealousy, imposed by the common law courts,[54] and the latter were governed by precedents established in an agricultural rather than commercial economy.[55] To provide a remedy there was set up the court of policies of insurance in 1601.[56] This was the first English legislation with respect to insurance.[57] Its frequently quoted preamble contains the insurance concept of the day:

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[50] Magens, *opus cit.,* vol. 2, pp. 249, 250. For a copy of this policy see Appendix II.

[51] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. and C. M. Goodsell, N. Y. (1871), vol. 1, pp. 485, 486: "At a very early period Chambers of Ins. were estab. in various cities of Europe. Their objects appear to have been two-fold: (1) to promote the practice of marine ins. on a solid and uniform basis; and (2) to settle all disputes arising among merchants and others concerning matters of ins." The earliest of these appear to have been founded in the Mediterranean ports about the 12th Century, with the chief one probably in Venice. In 1574 such a Chamber was established in London when one Richard Candler, Mercer, obtained a grant from Queen Elizabeth "to make and regis. all manner of assu. policies . . . ." In the year 1627 a monopoly was granted by King Charles I, "for the sole making and registering of all manner of assurances, intimations, and renunciations, made upon any ship or ships, goods, or merchandize, in the Royal Exchange, or other places within the city of London, for thirty-one years." Anderson, *opus cit.,* vol. 2, p. 327. See also Weskett, John, *A Complete Digest of the Theory, Laws, and Practice of Insurance,* Dublin (1783), pp. 89-96. The Chamber seems to have disappeared "at, or shortly after the Revolution of 1688 . . . ." Wright and Fayle, *A History of Lloyd's,* Macmillan, London (1928), p. 39.

[52] Vance, "Handbook of the Law of Insurance," *opus cit.,* p. 15: "These merchant courts . . . seem to have been adequate to dispose of any litigation that arose among merchants during several centuries, and the preamble to 43 Eliz. c. 12 . . . contains a striking tribute to the honesty and fairness which had characterized the dealings of merchants with reference to all contracts of insurance."

> Whereas it ever hathe bene the policie of this realme by all good meanes to comforte and encourage the merchante, therebie to advance and increase the generall wealth of the realme, her Majesties customes, and the strength of shippinge, which consideracion is nowe the more requisite, because trade and traffique is not at this presente soe open as at other tymes it hathe bene. And whereas it hathe bene tyme out of mynde an usage amongste merchantes, both of this realme and of forraine nacyons, when they make any greate adventure (speciallie into remote partes), to give some consideracion of money to other persons (which commonlie are in no small number), to have from them assurance made of their goodes, merchandizes, ships, and things adventured, or some parts thereof, at such rates, and in such sorte, as the parties, assurers and the parties assured can agree, whiche course of dealinge is commonlie termed a policie of assurance; by means of which policies of assurance it cometh to passe upon the losse or perishinge of any shippe there followethe not the undoinge of any man, but the losse lightethe rather easilie upon many, than heavilie upon fewe, and rather upon them that adventure not, than those that doe adventure; whereby all merchantes, speciallie the younger sorte, are allured, to venture more willinglie and more freelie.

The court was not successful, and during the next century and a half little progress in insurance law was made.[58] Down to the year

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[53] Weskett, *opus cit.,* Preliminary Discourse, pp. v-xxxvii.

[54] Insurance Company *v.* Dunham (1870), 11 Wall. (*U. S.*), 1, 23.

[55] Vance, "The Early History of Insurance Law," *opus cit.,* p. 14. See also Richards, George, "Fundamentals in the Law of Insurance and Why Adopted," Address before the *Insurance Society of N. Y.* (1917), p. 4.

[56] 43 Eliz. c. 12 (1601).

[57] Vance, "The Early History of Insurance Law," *opus cit.,* p. 14.

[58] Holdsworth, "The Early History of the Contract of Insurance," *opus cit.,* p. 103. There were two defects: "Firstly, its jurisdiction was confined to policies registered in the London Office of Insurances, so that it did not extend to insurances made in other sea port towns. Secondly, it did not exclude specifically the jurisdiction of the courts of common law and the Court of Admiralty." See Walford, "Cyclopaedia," *opus cit.,* p. 487. See further, Wright

1756, when Lord Mansfield became Chief Justice of Kings Bench, there had been only sixty insurance cases.[59] Through his untiring efforts he developed a system of insurance law.[60]

In the preceding pages the development of life insurance was sketched throughout the experimental period, with particular emphasis upon the importance of the marine influence. Nothing further of primary importance occurred until the beginning of the transitional phase. Before treating of the latter it is desirable to record the activities of the gilds in order to obtain a true picture of life insurance growth.

2. *Gilds.*

In the limited sense that the payment of periodic contributions in return for a certain benefit at death is characteristic of life insurance, the gilds seem more nearly to have attained this end than did the life insurance described in the preceding pages. There, policies were taken primarily for short periods by members of the more prosperous groups, usually against the hazards of travel and capture. But even as practiced by the gilds the institution was vastly different from that of the present time, only the fundamental concept being present.[61]

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and Fayle, *opus cit.,* p. 38. The court "was frequently at loggerheads with the established Courts of Law, who held their Common Law jurisdiction to be infringed by its activities. Its decisions have left no recognisable trace on the law of marine insurance; its records have wholly disappeared, and it is doubtful whether it has so much as a hundred years of effective life." Blackstone writes: "insurance causes are now usually determined by the verdict of a jury of merchants, and the opinion of the judges in case of legal doubts; whereby the decision is more speedy, satisfactory, and final . . . ." 3 *Blackstone's Commentaries* 75. See also Park, *opus cit.,* p. lxxxviii.

[59] *Ibid.,* p. lxxxix.

[60] Richards, *opus cit.,* p. 8. Mansfield, "doubtless, did more than any other judge of any age to systematize the law of insurance. He was a great judge in commercial law generally, and it is said that out of thousands of judgments rendered by him only two cases were reversed on appeal. . . . To assist him, he established at Guildhall a body of special jurymen, expert in the usages of trade, . . ." Vance, "The Early History of Insurance Law," *opus cit.,* p. 17: "When he retired from the bench in 1788, he left a complete system of insurance law. . . ."

[61] *Encyclopaedia Britannica,* 14th Ed., vol. 14, p. 50. See also Palgrave's Dictionary of Political Economy, *opus cit.,* vol. 2, p. 410. "The Gilds of England may be most conveniently dealt with in three groups, and in the chronological order in which they made their appearance. First the Frith or Peace Gilds, secondly the Social and Religious Gilds, and thirdly the Trade Gilds which may be again sub-divided as Merchant and Craft Gilds." Rob-

(a) In Greece and Rome.

Gilds were organized for mutual help,[62] and they existed two or three centuries before the Christian Era,[63] among both Greek and Roman communities.[64] Their origin is doubtful.[65] In ancient Greece they were called *Thiases* and sometimes *Evanes*. They were numerous in many cities. At Rhodes may be mentioned the *Companions of the Sun, The Sons of Bacchus,* of *Minerva,* of *Jupiter Atabyrius,* of *Jupiter the Savior.* At Athens, the *Heroists,* the *Oregons,* and the *Thiasotes.*[66] Institutions such as these were known in Rome as *Collegia.* The *Collegium Cultorum Dianae et Antinoi,* founded 133 A. D., according to an inscription [67] found near Rome, at Lanuvium,[68] made provision for the burial of members.[69] Contributions apparently were equal for all members, no distinction being made on the basis of age.[70] While some authorities have attempted to show a resemblance between modern endowment policies and the payments of some of the military colleges, such theories cannot be substantiated.[71] The military colleges as well as the *Collegia Tenuiorum* were essentially burial societies.[72] The following passage gives an

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inson, M. F., *"The Spirit of Association,* John Murray, London (1913), p. 10. The Religious and Social Gilds "were the first lay associations to evolve and apply the methods and principles of mutual help." *Ibid.,* p. 28.

[62] They "seem, on the whole, to have been friendly associations made for mutual aid and contribution, to meet the pecuniary exigencies which were perpetually arising from burials, legal exactions, penal mulcts, and other payments or compensations. That much good fellowship was connected with them can be doubted by no one." Turner, Sharon, *The History of the Anglo-Saxons,* Longman, etc., London, 5th Ed. (1828), p. 101.

[63] Landis, Abb, *Life Insurance.* Nashville (1914), p. 1.

[64] Hardy, G. F., "Friendly Societies," *J. I. A.* (1889), vol. 27, p. 246.

[65] "A vast amount of labour and ingenuity has been expended to explain wherein the gild system found its origin, without, it must be owned, any very definite results having been attained." Jack, *opus cit.,* p. 33.

[66] Landis, *opus cit.,* p. 1.

[67] Corpus Inscriptionum Latinarum, XIV, 2112, cited by Jack, *opus cit.,* p. 19.

[68] Landis, *opus cit.,* p. 1.

[69] The *Collegia* were of two classes, one paying a sum of money to the heir, the other providing either a common burial place for interment or a common monument for cremation. Jack, *opus cit.,* p. 19. Many of their activities were religious in nature. Hardy, *opus cit.,* vol. 27, p. 246. See also Manes, Alfred, *Versicherungswesen,* Teubner, Leipzig, 4th Ed. (1924), 2 vols., vol. 1, p. 23.

[70] Jack, *opus cit.,* p. 20, footnote.

[71] *Ibid.,* pp. 26, 27.

[72] *Ibid.,* p. 29.

excellent account of their method of operation and similarity to modern insurance:[73]

> The Collegium Cultorum Dianae et Antinoi was clearly a mutual society for a common object, for the removal of what was in those days regarded as a common danger, namely, that of death intervening without the presence of a sufficient sum of money to provide for a fitting burial, and the means of attaining this end were a present payment to secure a future benefit. There is an analogy with present-day methods in the averaging of good risks with bad, of the contributions, that is to say, of those who paid "too much" with the contributions of those who paid "too little," and the analogy is further observable even in matters of routine. We see it for example in the care that was exercised on the occasion of the paying out of the benefit in order to guard against fraud, the only person entitled to receive the money being the testamentary heir; where the member died intestate the college itself undertook the charge of the burial. There were regulations exempting the society from liability in cases where payment of the monthly subscription had been neglected for a certain length of time, and provisions relating to suicides.

(b) In England.

Charity, which in the middle ages was largely a function of the Church,[74] was in part transferred to the gilds during the thirteenth and fourteenth centuries.[75] In England, evidence is found pointing to their origin as early as the ninth century.[76] Prominent among the purposes of association was provision for burial.[77] In addition to donations, the gilds obtained their funds from entrance fees and single or periodic subscriptions, "either in money or in kind, or both, wax for candles, barley, doubtless for ale, and honey for mead being customary forms of contribution." A distinction was sometimes made in favor of women members and married couples. "Penalties were imposed for non-payment of sums due. In some gilds, however, the fact of poverty released the member from payment, whilst in others payment had still to be made out of the amounts granted." Moral hazard was guarded against by providing that benefits would not be paid where the member was at fault.[78] One may find here many of the features of present-day life insurance.

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[73] *Ibid.*, pp. 20, 21.

[74] "Prior to the 13th century, aid was generally dispensed to the necessitous by the Church. Being the central and only receiver of contributions for this purpose, and the sole dispenser of relief, its charitable functions covered the same kind of wants that our friendly societies deal with at the present time. These functions were to feed and clothe the destitute, to visit the sick, to house the homeless, to liberate prisoners, and to bury the dead—in its own words, *vito, poto, cibo, redimo, tego, collego, condo.* Such duties did not remain merely voluntary. Grants, tithes, bequests, etc., gradually increasing the property of the Church, imposed at the same time the tacitly understood obligation to satisfy the wants of the poor, and at a later period we find the obligatory nature of the duties of the Church to the poor emphasized and confirmed by various legislative enactments, such as the Act 9 of Edward I, and Act 15 of Richard II, and others." Hardy, *opus cit.*, p. 246.

[75] "In the 13th and 14th centuries, a great social change took place. Agricultural serfdom was gradually breaking up, industries began to develop, and a general tendency was manifested by society to forsake the socialistic order of things. As regards the relief of the poor, the first effect of the change was the taking over of part of the functions hitherto performed by the Church by smaller communities of persons, each community, or guild, as they were called, having a more or less distinct and well defined object. These guilds undertook, though usually as an object of secondary importance, the distribution of relief amongst their members, constituting then the first friendly societies in this country of which we have any clear information." *Ibid.*, pp. 246, 247.

During the eighteenth century the gilds were gradually replaced by the friendly societies which in Great Britain have been so instrumental in mitigating the effects of poverty.[79] They had their real beginning with the passage of Rose's Act in 1793, while in the United States the fraternal societies, which fulfill a similar need, had their origin in 1868, in the organization by Father Upchurch, of the Ancient Order of United Workmen.[80]

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[76] Walford, "Cyclopaedia," *opus cit.*, vol. 4, p. 381. See also Eden, Sir F. M., *The State of the Poor*, London (1797), vol. 1, p. 590: "These useful associations, if their vanity could be flattered, . . . by marks of antiquity, might easily trace their origin to the earliest periods of the English History: for that those writers are mistaken, who suppose that the introduction of gilds, or fraternities, . . . was subsequent to the Conquest, is evident from several curious Saxon deeds, (now preserved in the Museum,) which Dr. Hickes has transcribed and inserted in his learned work on Northern Literature." The rules of two Saxon societies are translated on pp. 591-594, and contain provisions, among others, applying to sickness relief and burial.

[77] An interesting account, based on some old manuscripts, is found in Turner, *opus cit.*, p. 98: ". . . the objects of their union appear to have been, that every hearth, or family, should, at Easter in every year, pay one penny; and on the death of every member of the gild one penny, whether man or woman, for the soul's scot. The Canons were to have this soul's scot, and to perform the necessary rites." *Ibid.*, p. 99. According to an instrument made on the establishment of a gild of thegns at Cambridge, if "any of the gild died, all the gild-scipe was to carry him wherever he desired; and if any neglected to attend on this occasion, he was fined a Syster of honey; and the gild-scipe was to furnish half of the provisions at the interment, and every one was to pay two-pence for alms, and what was suitable was to be taken to St. Ętheldrytha." See also Walford, "Encyclopaedia," *opus cit.*, vol. 4, pp. 381, 382. Here are stated some of the rules of the St. Catherine's Gild, founded in Coventry in the reign of Edward III. [1327-1377.]

[78] Jack, *opus cit.*, pp. 141-143.

[79] Palgrave's Dictionary of Political Economy, *opus cit.*, vol. 2, p. 409.

The influence of the gilds and friendly societies has been evaluated by a careful student of their development as follows: [81] ". . . whereas gilds and *montes,* corodies and State tontines have all passed away, the friendly societies are with us still. The former had their share, greater or smaller, in the building up of the insurance fabric, but at best they have served but as stones on which to lay others, and were long ago lost somewhere in the foundation walls; the latter form a wing of the main edifice itself."

The Transitional Period.

1. *First Organizations.*

The first attempts to establish organizations whose sole purpose was to provide life insurance was made at the close of the seventeenth century. In 1698 the Mercers Company was entrusted with the care of a fund for the benefit of widows of clergymen and others.[82] It was followed in the next year by the Society of Assurance for Widows and Orphans.[83] Both schemes were limited and imperfect,[84] although the latter had the essential characteristics of life insurance.[85] The form of the policy in use was as follows: [86]

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[80] Landis, *opus cit.,* p. 1.

[81] Jack, *opus cit.,* p. 223. See also Young, T. E., "An enquiry into the existence of Historical Analogies to Life Assurance," *J. I. A.* (1912), vol. 46, pp. 317, 322. Gilds and collegia "cannot, except in the very loosest and vaguest form, be regarded as anticipations of life assurance . . . ."

[82] Knight, *opus cit.,* p. 25. See also Manes, *opus cit.,* vol. 2, p. 6. "The oldest existing office, which transacted at any time a life-insurance business, is the Hand-in-Hand, London, chartered in 1696; but its first life-insurance policy was not issued until 1836." Homans, *opus cit.,* p. 93. The Sun Insurance Office was founded in 1710. *N. Y. Ins. Rep.* (1860), vol. 1, p. 5.

[83] Knight, *opus cit.,* p. 27. Walford, "History of Life Assurance in the United Kingdom," *opus cit.,* vol. 25, p. 127.

[84] Angell, J. K., *A Treatise on the Law of Fire and Life Insurance,* Boston (1854), p. 301.

[85] Walford, "History of Life Assurance in the United Kingdom," *opus cit.,* vol. 25, p. 131. "The lives were to consist of persons in good health, and not over a specified age; persons whose social position enabled them to be identified. Military, Naval and seafaring risks were excluded, and also deaths at the hands of justice. There was to be a probationary period (six months) within which if death took place there should be no claim. This last regulation was to compensate for the absence of medical examination—a practice introduced at a later date."

[86] *Ibid.,* pp. 130, 131.

Office of Assurance for Widows and Orphans. London, the..........day of ....16........... This Policy of Assurance is given unto..contributor to the Society of Assurance for Widows and Orphans, on the behalf of..........................his now wife, and also on behalf of....................................his sons and daughters, or the survivor or survivors of them, upon the Joint Stock and Credit of the said Society, begun in London the 6th April, 1699, for payment of £500 of lawful money of England, unto................................of the Parish of ....in the......................of......................for the use and benefit of................his now wife................sons and daughters of the said................or the survivor or survivors of them, within two months after the death of the said......................now the husband of the said......................and the father of the said......................subject to the conditions and agreements mentioned in the Articles of Settlement of the said Society, agreed to and signed by the said......................on the behalf of his wife and his sons and daughters above mentioned: Provided that the said...................... is and shall be living at the end of six months, to be accounted from and after the..........................day of..........................

In Witness whereof the Seal of the said office is hereunto affixed the day and year first above written......................Registrar approved by the Trustees ....Secretary.

The Amicable Society for a Perpetual Assurance was the fourth mutual contribution life office established in London,[87] but it was the first which was to endure for any considerable length of time.[88] It was chartered March 25, 1706, by Queen Anne.[89] Criticism of its plan has also been made.[90] The projection of these early associations occurred in a period when speculation knew no bounds. In 1713 the principal officer of the Amicable Society embezzled £6,500 of its funds;[91] many insurance offices had invested money in the South Sea Company.[92] Two restrictions[93] prohibiting wagering and lotteries had been enacted by Queen Anne prior to the bursting of the South Sea bubble and the passage of the famous *Bubble Act in* 1719.[94] Of some forty or fifty life insurance schemes promoted between 1699 and 1720, every one save only the Amicable "passed into thin air," bringing upon the public a loss of £150,000.[95]

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[87] *Ibid.*, p. 207.

[88] The Amicable did business for one hundred and sixty years, merging with the Norwich Union Life Office in 1866 under authority of Parliament. *Ibid.*, p. 209. Much to the regret of Superintendent Barnes of New York. *N. Y. Ins. Rep.* (1864), vol. 5, p. lxxxvii.

[89] Homans, *opus cit.*, p. 93. *N. Y. Ins. Rep.* (1860), vol. 1, p. 5.

[90] There were two defects. (1) The same payments were made for all persons, and (2) "the Sum paid on the Death of the Life Assured, was not regulated on equitable Principles according to the Value of the Contribution; but depended on a Contingency; that is the number of Lives insured, which may fall within the year." Eden, Sir F. M., "On the Policy and Expediency of Granting Insurance Charters." (1806), *Pamphlets Finance,* vol. 86. Eden cites Price on *Rev. Paym.*, 6th Ed., vol. I, p. 160. For a copy of the "Terms, Methods and Advantages of insuring Lives in the Office of the Amicable Society for a Perpetual Assurance, kept in Serjeant's-Inn Fleet street," (1758) see Cunningham, T., *The Law of Bills of Exchange, Promissory Notes, Bank-Notes, and Insurances,* London, 3rd ed. (1766), p. 299.

2. *Stock Companies.*

The Act of Parliament of 1719[96] authorized the incorporation of two English insurance companies and forbade the organization of any other stock insurance companies. It was under this act that the still-existing London Assurance Corporation and Royal Exchange Assurance Corporation were founded on June 24, 1720.[97] The power to write life insurance was extended to them on April 29, 1721.[98] These two and the Amicable were the only three companies for granting life insurance until the establishment of the Equitable Society in 1762, although some societies were formed for the purpose of insuring lives of a particular class, for example, naval and military men, clergymen, schoolmasters and others.[99]

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[91] Walford, "History of Life Assurance in the United Kingdom," *opus cit.*, vol. 25, p. 209. "It turned out that some portions of the funds of the Society were invested in Lottery tickets in (I assume) the State Lotteries of 1710 and 1712."

[92] *Ibid.*, vol. 25, p. 270.

[93] 9 Queen Anne, ch. 6, § 57 (1710). It was enacted, "That every Person or Persons, who after the eighth Day of March one thousand seven hundred and ten shall erect or set up any Office or Place, for making Assurances on Marriages, Births, Christnings and Service or on any of them, shall forfeit for every such Offense the Sum of five hundred Pounds, ..." 10 Queen Anne, ch. 26 (1711) was "An act for laying additional Duties on Hides and Skins, etc. . . . and for suppressing unlawful Lotteries, and other Devices of the same kind . . . ." See also Anderson, *opus cit.*, vol. 3, p. 46.

[94] 6 Geo. I, ch. 18 (1719).

[95] Walford, "History of Life Assurance in the United Kingdom," *opus cit.*, vol. 25, pp. 270, 271.

[96] 6 Geo. I, ch. 18 (1719). "An Act for better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned." The preamble emphasizes the greater security of stock companies. "Corporations or Bodies Politick, Societies and Partnerships" were restricted from writing marine insurance after June 24, 1720. The act provided for detailed regulations of the two corporations.

[97] Anderson, *opus cit.*, vol. 3, pp. 99, 100. "Yet neither of them are by the before-quoted statute, nor by their consequent charters, exclusive in any respect relating to private persons, who may and still do enjoy and practice insurance on ships and merchandize as formerly; but with respect to all other corporations they are both exclusive excepting however the East India and South Sea companies, both of which corporations may still continue to advance money, says the statute by bottomree on their own ships." But partnerships could carry on all insurance business except marine. Walford, "History of Life Assurance in the United Kingdom," *opus cit.*, vol. 26, p. 13.

3. *Characteristics of the Business.*

Policies of this period were usually for short terms, effected chiefly for business purposes. They were much the same as that of 1583,[100] with the exception that restrictions were now beginning to creep in. Marine policies served as the model and the life was "rated and valued at y^e^ Sum Assured without any farther Account to be given to them [the company] for the same." No mention of the insured's age appears, that having been of minor importance in fixing the premium. The traditional rate of £5 per cent prevailed,—still another influence of marine underwriting where the rates of premium on both the captain's life and the vessel were the same, *i. e.,* usually 5 per cent.[101] A copy of a policy granted November 25, 1721, by the London Assurance Corporation has been preserved.[102] A most interesting account of the methods of writing life insurance in this period is available from instructions sent by the London Assurance Corporation to its representative in Ireland.[103]

During this period many attempts were made to satisfy the demands for true life insurance protection which were more and more insistently manifesting themselves. Although many plans were put into operation, the evil effects of the readjustment following the culmination of speculative fever in 1720, in the opinion of one writer,[104] retarded the development of life insurance at least one full generation. Its extent is indicated by the fact that the premiums paid to the Royal Exchange aggregated approximately £11,000 during the period from 1721 until the time of the founding of the Equitable Society.[105] The life insurance in force in Great Britain in 1760 has been estimated at £350,000. Of this amount, £250,000 was in the Amicable Society £50,000 in the London Assurance Corporation, £20,000 in the Royal Exchange, and £30,000 with private insurers.[106] Insurance under a policy designed to cover the whole duration of life at a premium dependent upon age was very rarely used.[107] The revival of interest was very probably due to the adoption of this plan by the Equitable Society. Certain it is that with the latter's inception, modern life insurance had its real beginning.[108]

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[98] Baily, Francis, "An Account of the Several Life-Assurance Companies established in London," London, 2d Ed. (1811), p. 6, pub. in Comber, W. T., *Inquiry Speeches, etc.*

[99] *Ibid.,* p. 8.

[100] *Supra,* p. 18.

[101] Walford, "History of Life Assurance in the United Kingdom," *opus cit.,* vol. 25, pp. 434, 435. Magen, *opus cit.,* vol. 1, p. 33: "The common Premium on a good Life from 20 to 56 Years of Age is 5 per Cent. and from 50 to 60 Years old, 6 per Cent. per Annum . . ."

[102] *J. I. A.* (1881), vol. 22, pp. 248, 249. Reproduced in Appendix I. For the contract in use by private insurers during this period, see a copy of a policy written in 1754, Appendix III.

[103] See Appendix XIV.

The Beginning of Modern Life Insurance.

1. *Life Insurance Premiums.*

The accurate determination of the rate of premium to be charged the insured is of fundamental importance in any successful system of insurance. Particularly is this true in life insurance which covers long periods of time and is not subject to cancellation by the company. Life insurance rates are calculated by applying the laws of probability to a given mortality table. Without such statistical basis the business would be decidedly speculative, and it should be emphasized that the development of life insurance mathematics played an important part in supplying life insurance with a firm financial foundation.

Although Pascal, in 1654, "outlined the basic principles of the theory of probability now recognized as vital to actuarial science," [109] it was not until 1693 that Dr. Edmund Halley constructed the first real mortality table.[110] The early tables were necessarily crude and inaccurate because of their local nature and the lack of development in the collection and tabulation of vital statistics, but they seem to have been sufficiently conservative from the standpoint of premium calculation.[111]

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[104] Walford, "History of Life Assurance in the United Kingdom," *opus cit.*, vol. 25, p. 435.

[105] *Ibid.*, vol. 26, p. 5.

[106] *Ibid.*, p. 6.

[107] ". . . and we may take it as established that no plan of Life Assurance, as we now understand it, had been contemplated by any Company or Society, or had been considered by any Legislature in Europe prior to the year 1760." *Ibid.*, p. 4.

[108] *Ibid.* "It was upon the foundation of the *Equitable* Society, as finally established in 1762, that the entire superstructure of modern Life Assurance has been raised."

[109] Knight, *opus cit.*, p. 17.

2. *The Equitable Society.*

The establishment of the Equitable Society in 1762 [112] was the result of activities instituted six years earlier.[113] The system of insurance differed radically from the methods of any companies which preceded it, and with its successful operation modern life insurance had its beginning. The founders adopted a plan of insurance for the whole of life, based upon scientifically calculated premiums, paid annually and dependent upon the age of the insured at the time of entry into the society. A fixed and determinate sum, subject to no diminution, was payable upon death.[114] An applicant for membership in the Society was required to fill out a proposal form [115] and make a declaration as to the truth of his statements. The policy itself was merely a certificate stating the amount of insurance and the rate of premium. It contained no conditions of insurance, but all members were subject to the general regulations of the Society.[116] The continued existence of the Equitable to the present day testifies to the soundness of the foundations upon which it was built.

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[110] *Ibid.,* p. 19.

[111] Dawson, M. M., *Elements of Life Insurance,* 3d Ed., Spectator Co., N. Y. (1914), p. 19. For a discussion of some of the more important tables see *ibid.,* p. 26, and Knight, *opus cit.,* pp. 9, 17-21, 36-37, 45-47.

[112] Jack, *opus cit.,* p. 238.

[113] "The first step towards the founding of the Society for Equitable Assurances on Lives and Survivorships which, under the shorter form of the Equitable Society, was to become so famous, was the insertion of an advertisement under the date February 28, 1756, in the newspapers, announcing a meeting for March 2nd and inviting the attendance of any who might be induced to join such an undertaking." *Ibid.,* pp. 236, 237.

[114] Walford, "History of Life Assurance in Great Britain," *opus cit.,* vol. 26, p. 3.

[115] For a copy of this form see Chap. VI, p. 107; *ibid.,* note 15. For a copy of a policy used by the Equitable at a later date see Angell, *opus cit.,* Appendix IX-XI.

[116] Walford, "History of Life Assurance in the United Kingdom," *opus cit.,* vol. 26, pp. 8, 9.

In 1792 was established the Westminster Society, "the first company having a capital stock whose possessors had all the rights of ownership and management, and who entered upon the business of life insurance for a profit.[117]

It is not the purpose of this study to continue the development of life insurance in England to the present time. The foregoing account will form a background for a discussion of the growth of the institution in the United States. Further reference to English practices will be found in the treatment of the various policy provisions. No attempt has been made to analyze early policies in detail, since the method to be followed is one involving a complete analysis of each clause and its interpretation.

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[117] Knight, *opus cit.*, p. 43.

CHAPTER II

HISTORY IN THE UNITED STATES

The Colonial Period.

During the colonial period of our history the business of insurance was transacted almost entirely by individual underwriters.[1] As a matter of fact, the formation of stock insurance corporations was forbidden by the Act of Parliament of 1719 [2] which granted a monopoly to two English Companies.[3] While this applied to His Majesty's dominions, to remove all doubt it was extended specifically to America in 1741.[4] Probably because of the limited resources of the new country English underwriters predominated.[5] What little life insurance was written was insured with personal marine underwriters according to London regulations. The premiums, unless the hazard was extreme, were usually five per cent.[6] The policies were similar to those in use in England at the time.[7] It may be added that most of the life insurance written in the United States prior to the formation of the mutual companies in the fifth decade of the nineteenth century was effected through British companies operating in this country.[8]

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[1] Clark, J. L., "History of the Massachusetts Insurance Department," *Mass. Ins. Rep.* (1876), vol. 21, pt. 2, p. 198. See also Allen, P. S., "The Story of the Birth of Life Insurance in America," *Insurance Monitor* (1898), vol. 46, p. 383.

[2] 6 Geo. I, ch. 18.

[3] *Supra,* ch. I, note 96.

[4] 14 Geo. II, ch. 37, § 1.

[5] "Resort was had by early shippers to the private underwriters of Great Britain, and early mention of London underwriting for American interests is found in the *Penn and Logan Correspondence,* though William Penn's scruples as to insuring his property often prevailed." Montgomery, T. H., *A History of the Insurance Company of North America,* Phila. (1885), p. 14.

[6] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882),* Review Pub. and Print Co., Phila. (1888), p. 622.

[7] A policy on the life of General Benjamin Lincoln, Collector of the port of Boston (1790) is reproduced in Appendix VI. It terminated "at the Setting of the Sun," in this particular case the shortest day of the year. Compare this with a Scottish policy written in 1785. Appendix V.

[8] Moir, Henry, "Divergent Developments of Life Insurance in Britain and America," *T. A. S. A.* (1928), vol. 29, pp. 51, 52. For the past forty years "there have been no British companies actively soliciting life insurance in the United States."

The first insurance office was opened in Philadelphia by Mr. John Copson in 1721,[9] followed by one in Boston in 1728.[10] A fire insurance office was established in South Carolina in 1735, but it existed only five years.[11] The first American insurance corporation received its charter from the colony of Pennsylvania on February 20, 1768.[12] It was founded in 1752 under the name of The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire and has continued in business down to the present day.[13] Turning again to life insurance, the establishment of the first company also occurred in Philadelphia, where it still operates. It began its corporate existence January 11, 1759,[14] under the name of the Corporation for Relief of Poor and Distressed Presbyterian Ministers, and of the Poor and Distressed Widows and Children of Presbyterian Ministers.[15] The first policy, on the life of Francis Alison, was dated May 22, 1761,[16] although insurance was granted prior to this time without individual forms of contract.[17] The insured agreed to pay premiums "during the Term of his natural Life, yearly, and every Year," with the further provision that an equal premium would be added "as often as he shall marry." The benefit was in the form of an annuity, although provision was made in certain cases for a lump sum payment to children.[18] The policy was subject to the provisions of the Plan of Agreement.[19] On February 7, 1769, the Corporation for the Relief of the Widows and Children of Clergymen in the Communion of the Church of England in America was chartered in Pennsylvania.[20] Its business was small and no record has been preserved.[21]

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[9] Montgomery, *opus cit.,* p. 15. An advertisement appeared in the American Weekly Mercury of May 25, 1721.

[10] Patterson, E. W., *The Insurance Commissioner in the United States,* Harvard Univ. Press (1927), p. 521.

[11] *Ibid.,* pp. 521, 522, citing *South Carolina Historical and Genealogical Magazine* (Jan., 1907), VIII, pp. 46-53.

[12] *The Statutes at Large of Pennsylvania from 1682 to 1801,* Pa. (1900), VII, ch. 576. It was a mutual company and presumably did not conflict with the English statutes. Patterson, *opus cit.,* p. 522.

[13] Allen, *opus cit.,* p. 383.

[14] *Ibid.,* p. 378. In 1715 a resolution was passed by the old Presbytery of Philadelphia to suggest a plan for relieving distressed widows and children. "A Fund for pious uses" was created by the Synod in 1716, but without lasting benefit. Another plan was submitted in 1754 by the Rev. Francis Alison.

[15] ". . . only a small amount of business appears to have been transacted, since in 1845 only one policy was in force for the amount of $1,000. In 1875 the Fund was authorized to transact a general life insurance business as a corporation, and it has since attained to an institution of greater importance." Hoffman, F. L., "Fifty Years of American Life Insurance Progress," *Quar. Pub. of the American Statis. Assn.* (1910-11), vol. 12, p. 670.

[16] For a copy see Appendix IV.

[17] Allen, *opus cit.,* p. 378.

The First Stock Companies.

The first insurance company having a capital stock was the Insurance Company of North America, incorporated April 14, 1794.[22] It had its origin in The Universal Tontine, formed in Philadelphia early in the year 1792.[23] Although power to write life insurance was granted,[24] this branch of the company's activity was extremely limited, probably because of the high rate of premium.[25] A committee was appointed on January 20, 1794, to formulate a policy for insurance against capture by the Barbary Corsairs. In February such a policy was granted at a premium of two per cent to Captain John Collet "on his Person against Algerines and other Barbary Corsairs in a Voyage from Philadelphia to London, in the ship *George Barclay,* himself Master, Valuing himself at $5,000." [26] It was not until May 21, 1796, that the first two life policies were approved.[27] The term of the first policy in force was for eighteen months, for which a premium of ten per cent was collected. It is curious to note that the insurance was to be void if the insured should "voluntarily go to sea (except on his intended voyage to India above mentioned.)" [28]

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[18] Plan of Agreement Art. XI. Fowler, *opus cit.,* p. 615.

[19] *Ibid.,* p. 614.

[20] "The same persons were incorporated by the Provinces of Pennsylvania, New Jersey, and New York, respectively. Its plan, the crude idea of an annuity five times the amount of single annual payments was derived from the earlier Presbyterian Corporation." Fowler, *opus cit.,* p. 617.

[21] Hoffman, *opus cit.,* p. 671.

[22] *Laws of Pa. 1700-1810,* Phila. (1810), vol. 3, ch. MDCCXXIX.

[23] Montgomery, *opus cit.,* p. 9.

[24] *Ibid.,* p. 151.

[25] *Ibid.,* p. 74. In a letter in 1799 the secretary of the company stated: "There have been but few instances of this kind, perhaps half a dozen, in each of which we have gained the premium." No policies seem to have been issued after 1800.

[26] *Ibid.,* pp. 72, 73. Insurances of this kind were "declared to be made upon the person of ——— against the risque of Capture by the Algerines or any of the Barbary Corsairs only, and it is mutually agreed between the Parties to this Policy, that if the said ——— should be killed in any attempts made to defend the said Brig against the said Algerines or Corsairs, or should die before or after his Captivity and before he should be Ransomed, the assurers shall not be bound to pay any other Sum or Sums than what may have been expended in attempting the Ransom of the said ———."

In this period of American history the use of life insurance was distinctly of minor importance. Excepting annuity contracts, fewer than one hundred policies were in force, "admitting that in a few instances policies had been secured from English offices." [29] The first case involving a life insurance contract in this country was that of Lord *v.* Dall.[30] This also is evidence of the limited volume of business transacted.[31] The court gravely considered whether such contracts were legal, pointing out that they were "not favored in any of the commercial nations of Europe, except England . . ." [32]

Corporate Life Insurance.

The first commercial life insurance company was the Pennsylvania Company for Insurances on Lives and Granting Annuities. Although founded in 1809, a charter was not granted by the Pennsylvania Legislature until March 10, 1812.[33] Policies were granted for the terms of one, five, and seven years as well as for the whole of life, and were subject to a declaration deposited with the company [34] and the established rules.[35] An analysis of the whole life policy indicates that new restrictions upon the insured were gradually being imposed.[36] The customary charge of one dollar was exacted for each policy.[37] That a comprehensive understanding of the economic uses of life insurance and annuities was entertained in this period is exhibited in the text of an address printed by the company in 1814.[38] Although no life policies have been issued since 1872,[39] the company still operates in the banking and trust field.

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[27] ". . . on the life of John Holker from 6 June to 19 September inclusive, for $24,000 at one and a half per cent., which, however, appears not to have been accepted; and 'on the natural life of Bon Albert Briois de Beaumez.' . . ." *Ibid.,* p. 73.

[28] For a copy of the policy see Appendix VII.

[29] Fowler, *opus cit.,* p. 627.

[30] (March, 1815), 12 *Mass.* 115.

[31] Lord *v.* Dall (1815), 12 *Mass.* 115, 117. Parker, C. J., "It is true, that no precedent has been produced from our own records, of any action upon a policy of this nature. But whether this has happened from the infrequency of disputes which have arisen, it being a subject of much less doubt and difficulty than marine insurances, or from the infrequency of such contracts, it is not possible for us to decide."

[32] *Ibid.* "By the common principles of law, however, all contracts fairly made, upon a valuable consideration, which infringe no law, and are not repugnant to the general policy of the laws, or to good morals, are valid, and may be enforced, or damages recovered for the breach of them."

[33] Morris, H. S., *A Sketch of the Pennsylvania Company for Insurances on Lives and Granting of Annuities,* Lippincott, Phila. (1896), p. 13.

[34] *Proposals and Rates of the Pennsyl. Co. for Insurances on Lives and Granting Annuities,* Phila. (1847), pp. 14-17. Reproduced in Appendix XI.

In 1818 the Massachusetts Hospital Life Insurance Company was established, but the amount of its business was limited.[40] It operated in a manner differing very little from that of the Pennsylvania Company.[41] The next important company to be chartered was the New York Life Insurance and Trust Company, on March 9, 1830.[42] Its volume of business was small and the company some years later confined its activities to the trust field.[43] The same year witnessed the organization of the Baltimore Life Insurance Company, but its business was reinsured some thirty years later with the Equitable of New York.[44] On March 17, 1836, the Girard Life Insurance, Annuity and Trust Company of Philadelphia was formed, but like the New York Life and Trust, it later devoted itself exclusively to a trust business, which it still carries on.[45] In 1838 the Globe Life and Trust Company of Philadelphia commenced business, but ceased operation in 1857. The Ohio Life and Trust Company was projected in Cincinnati during 1840. Sixteen years later it reinsured its policies with the Jefferson Life, but in 1857 "both companies failed, causing the panic of that year." [46] These were the companies which dominated the field of proprietary life insurance before the beginning of the mutual companies.[47]

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[35] Morris, *opus cit.,* Appendix, pp. 113-115. Reproduced in Appendix XV.

[36] For a copy see Appendix VIII.

[37] *Supra,* n. 35. See also Jencks, T. R., "Life Insurance in the United States," *Hunts' Merchants' Magazine* (1843), vol. 8, p. 232: "A charge of one dollar is made for each policy of a common form; but where a special contract is required, the expense of drafting it must be borne by the assured."

[38] Morris, *opus cit.,* p. 91 *et seq*: "An Address from the president and directors of the Pennsylvania Company for Insurances on Lives and Granting Annuities, to the inhabitants of the United States, upon the subject of the beneficial objects of that institution." As early as 1843 an article appeared, pointing out the adaptability of life insurance to philanthropy. Jencks, *opus cit.,* p. 238.

[39] Morris, *opus cit.,* p. 136.

[40] In April, 1845, there were but 142 policies in force, representing $238,125 of insurance. Hoffman, *opus cit.,* p. 672.

[41] Knight, C. K., *The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 85.

[42] *Ibid.,* p. 87.

[43] Hoffman, *opus cit.,* p. 672.

[44] Knight, *opus cit.,* p. 90.

[45] Hoffman, *opus cit.,* p. 673.

The policy of the Girard Life, typical of those of the day, indicates that conditions and limitations were becoming more numerous. Provision is made for the payment of premiums more frequently than annually, with the company reserving the right to deduct unpaid premiums from the sum insured in case of early death.[48] Term policies were much more general than whole life, the seven-year policy being most popular. Children's endowments were infrequently written and the use of survivorship insurance was rare.[49]

Mutual Companies.

With the establishment of the Mutual Life Insurance Company of New York begins the period of modern life insurance.[50] Although the company was incorporated April 12, 1842,[51] its first policy was not issued until February 1, 1843.[52] The New England Mutual Life Insurance Company was chartered April 1, 1835, began business December 1, 1843,[53] but did not issue its first policy until February,

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[46] *Ibid.*

[47] "Among other early life insurance companies, reference may be made to the Manhattan Company, of 1808, originally chartered by the State of New York for the purpose of providing a water supply but which, under its charter rights, could engage in other branches of business, including insurance. In 1818 the Union Insurance Company of New York was chartered, and in 1823 the Duchess County Insurance Company, also of the city of New York." *Ibid.*, p. 672, footnote. For a table listing the companies organized prior to 1876 and still in business in 1910, with the date of commencing business, see *ibid.*, Table I, p. 713. An interesting article giving an account of the various policy provisions, rates, etc., of the Manhattan Company, is to be found in the *Insurance Monitor* (1879), vol. 27, p. 446. For detailed information concerning life insurance companies in 1845 see Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company*, New York (1895), ch. II.

[48] For a copy of the term policy see Appendix IX.

[49] Fowler, *opus cit.*, p. 655.

[50] Homans, Sheppard, "Life Insurance," *One Hundred Years of American Commerce*, Chauncey M. Depew, Ed., D. O. Haynes and Co., N. Y. (1895), p. 93.

[51] N. Y. L. (1842), ch. 246, p. 301.

[52] Homans, *opus cit.*, p. 93.

[53] Hudnut, *opus cit.*, p. 9.

1844.[54] The New York Life Insurance Company was incorporated as a marine insurance company, under the name of the Nautilus Insurance Company, on May 21, 1841.[55] By the Act of April 18, 1843,[56] the charter was amended to permit the writing of life insurance on the mutual plan. The company's present name was authorized in 1849.[57] The Mutual Benefit Life Insurance Company was incorporated on January 31, 1845,[58] beginning business in the following April.[59] The next year witnessed the founding of the Connecticut Mutual Life Insurance Company of Hartford.[60] A charter was granted to the Penn Mutual Life Insurance Company of Philadelphia on February 24, 1847.[61] The Canada Life Assurance Company, started in 1847, was the pioneer office of the Dominion.[62] These were the principal companies formed during this period.[63]

Life insurance in the United States was now well established. The soundness of most of the early life and trust companies aided materially in promoting confidence. Rates were based primarily upon English experience and the mortality experience of the companies was favorable. "The Actuaries' Table, based upon the experience of seventeen English life companies, and published in 1843, had not yet displaced the Carlisle, either in England or America." [64] The policy form differed little from that in use by the Girard Life and Trust,[65] although travel restrictions were a bit less harsh.[66]

It is not proposed to trace further the development of life insurance as an institution. Before proceeding to an analysis of the policy contract, it is desirable to review the growth of life insurance regulation by the government, a factor which has profoundly affected the rights of policyholders. The discussion, just as that which has preceded, will be in general terms. Legislation with particular application to the various aspects of the policy provisions will be considered in connection with the detailed study.

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[54] Knight, *opus cit.*, p. 105.

[55] N. Y. L. (1841), ch. 209, p. 191.

[56] N. Y. L. (1843), ch. 207, p. 275.

[57] N. Y. L. (1849), ch. 211, p. 324.

[58] N. J. L., Act of January 31, 1845.

[59] Hudnut, *opus cit.*, p. 9.

[60] Knight, *opus cit.*, p. 108.

[61] *Chronicles of The Penn Mutual Life Insurance Company, Phila.* (1922), p. 11. For a copy of the first policy issued, see p. 10.

[62] Macaulay, T. B., "Canadian Life Assurance," *P. A. L. I. P.* (1920), vol. 14, p. 108.

[63] For the dates of organization of later companies see Hoffman, *opus cit.*, Table I, p. 713. For a description of the transition from proprietary to mutual companies, see Knight, *opus cit.*, pp. 90-94.

[64] Hudnut, *opus cit.*, p. 11.

[65] See Appendix IX.

[66] Hudnut, *opus cit.*, p. 20. For *fac-simile* illustrations of the first application and policy forms see *ibid.*, ch. IV.

Chapter III

Government Regulation and Standard Policies

With the growth of the insurance business its regulation by the state was inevitable. Its technical nature and vital social importance made such supervision both necessary and desirable. Some insurance men have not always so regarded it, preferring to rely upon competition.[1] Others have looked upon it with favor.[2]

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[1] Fackler, D. P., "Are Non-Forfeiture Laws Expedient," ***Insurance***—A Compilation of the Addresses delivered before the Twenty-Ninth session of the National Convention of Insurance Commissioners, Milwaukee, W. A. Fricke, Ed. (1898), pp. 311, 317: "Legislative intermeddling in this country has kept our companies from developing as freely as in England, and in some cases has injuriously affected the interests of the policy-holders." Lunger, J. B., *ibid.,* pp. 338, 339: "I must emphatically agree with Mr. Fackler that legislation is inimical to the interests of life insurance, even if dictated by the best of intentions and from the most sincere motives. Life insurance is a business of a technical nature and cannot be analyzed by men who are not familiar with its principles. Moreover, as Mr. Fackler so pertinently points out, the conditions of the business are so changeable that legislation which would be of value to-day might in ten years become a menace. No!—keep legislation away from business. It only results in bringing timidity where positiveness should exist, and in discouraging concessions that would otherwise be made. Competition, and the wisely directed desire to increase the usefulness of the business, have done more to bring about liberality, fair play and safety than all the laws that have ever been enacted."

[2] McCall, J. A., *The Regulation of Life Insurance in the United States and Foreign Countries,* Lecture at Yale University (1904), p. 12: "Doubtless there has been overregulation with respect to the contract and the interpretation of it; but the excuse for this has been largely furnished by company managers who were too ready to exact the pound of flesh under stipulations that had been written in the bond for a good purpose, only to be used as instruments of injustice." Patterson, E. W., *The Insurance Commissioner in the United States,* Harvard Univ. Press (1927), p. 529. "The system of regulation through publicity and periodical reports was never a very effective method of protecting the insuring public against unsound enterprises. It rested upon the assumption that those who were unscrupulous or foolish enough to conduct an unsound insurance enterprise would be sufficiently ingenuous and intelligent to make public a clear statement of their own folly or rascality. Another postulate of the system was the belief that each individual could judge for himself, if given the 'facts,' the safety of an insurance company. The latter assumption became (if it was not always) unsound as soon as insurance became a popular economic device; for the man in the street cannot draw intelligent conclusions from even a clear and truthful financial statement. For these reasons the system was supplanted or supplemented by effective legal control through independent administrative agencies equipped with legally effective administrative devices for continuous supervision and control."

Early Regulation.

Among the commercial nations, legal regulation exists "in its mildest form" in Great Britain, where greater reliance is placed upon publicity. At the other extreme stands Germany.[3] Whether the English method would have been applicable to conditions in the United States is questionable.[4] In any event, regulation has existed practically from the earliest times. With the exception of negligible amounts of life insurance written by individuals, the business has been carried on by corporations, and their charters of incorporation always imposed some restrictions.[5] In England, for example, the Act of 1719[6] limited in great detail the powers of the two companies which it authorized.

Purpose of Regulation.

The earlier regulation dealt with such things as proper legal organization, deposits with the state as a guarantee of good faith, the safe investment of funds, and standards of solvency based upon a conservative mortality table and interest rate.[7] The purposes of state statutes at the present time have been summarized as follows:[8]

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[3] McCall, *opus cit.,* p. 17.

[4] "English insurance was a slow and careful development into an unknown enterprise, among a conservative people, conducted largely by professional people. In our country it was a sudden, wild growth among a restless people intent upon their own immediate affairs and careless of collateral matters, conducted largely by business men. We grew rapidly, and soon outstripped the mother country in invention, new ideas and in point of magnitude; but we grew unevenly, and soon developed a number of incidental and glaring abuses, among which were a disregard of minor equities, extravagance in getting business, a high lapsing rate and a wholesale forfeiture of reserves. Extravagance was the principal trouble, as it induced rebating and lapsing, and made it necessary to squeeze policy-holders in order to provide funds for high first commissions." Whiting, W. D., Insurance, *opus cit.,* pp. 330, 331. For an address favoring government regulation see Wolfe, S. H., *ibid.,* pp. 342-354.

[5] McCall, "The Regulation of Life Insurance," *opus cit.,* pp. 3, 4. The earliest form of supervision "simply required the same compliance with the laws that was exacted from corporations transacting other lines of business." Wolfe, S. H., "State Supervision of Insurance Companies," *Insurance,* Ann. Am. Acad. Pol. and Soc. Sci., Phila. (1905), p. 143. See also Hutcheson, W. A., "Some Facts in the Development of Life Insurance in the United States," *P. A. L. I. P.* (1920), vol. 14, pp. 53, 65.

[6] 6 Geo. I, ch. 18.

[7] McCall, *opus cit.,* p. 6.

[8] Vance, W. R., *Handbook of the Law of Insurance,* 2d Ed., West Pub. Co., St. Paul (1930), p. 28.

(1) To insure the solvency of the companies granting insurance; (2) to prevent the insured from being trapped by conditions of forfeiture set forth in the contract that might escape his attention; (3) the control of litigation against the insurer, in order to make the remedy of the insured under his contract speedy and efficient; and (4) a general control of the business of the insurers, in order to prevent any unfairness in the administration of their affairs, either to the public or to the policyholders, and for their proper and speedy winding up in case of insolvency.

Massachusetts and New York.

It is desirable to emphasize the fact that no matter how strict the laws which have been enacted, the policyholders are dependent for their protection upon honest and efficient enforcement. The Insurance Commissioner is usually vested with large discretionary powers, and it is essential to the wise administration of the laws that his appointment or election be based upon his capability and training for the duties of the office, rather than upon his political affiliations.

Massachusetts and New York are regarded by many authorities as the two states which have sponsored most that is beneficial in life insurance legislation. In Massachusetts, the principle of regulating investments and guarding against insolvency was introduced as early as 1795.[9] Although the protection of the policyholder was of primary importance, two other factors were effective in bringing about legislation. One of these was the hostility toward British insurers during the period of the War of 1812, evidenced in Pennsylvania by the passage of a law in 1810 forbidding foreigners from acting as insurers, and providing a penalty on those making or renewing policies with foreign insurers.[10] The other was the desire for revenue on the part of the states. Taxing statutes embody the earliest legislation in many states.[11]

At an early date the need of some administrative regulation through continuous official control of the business was recognized.[12]

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[9] *Mass. Laws from 1780 to 1807* (1807), 3 vols., vol. 2, p. 688. An Act to incorporate the Massachusetts Fire Insurance Co., June 25, 1795.

[10] Laws of Pa. (1809-1810), ch. 59, p. 81. Approved March 10, 1810. Marine insurance was excepted. This was the first general insurance legislation in the commonwealth. Fowler, J. A., *Pennsylvania Insurance Handbook,* Phila. (1860), p. 27.

[11] Patterson, *opus cit.,* p. 524.

[12] *Ibid.,* p. 525.

This was introduced by Massachusetts in a law reincorporating the Massachusetts Fire Insurance Company in 1799. This act further regulated the investments of the company and required a submission of its affairs to the General Court.[13] A short time later insurance regulation became a function of the general laws.[14]

Massachusetts again affords the first example of legislation of this type. The Statute of 1807 required a statement of the amount of capital stock, in what securities it was invested, and the amount of outstanding policies.[15] As in Pennsylvania, so also in New York, the first general insurance law was "An Act to prevent Foreigners from becoming Insurers in certain cases," passed in 1814.[16] On April 15 of the same year quite a comprehensive statute was enacted respecting incorporated insurance companies in cases of their insolvency.[17] In the next year the penalty of life imprisonment was imposed by "An Act declaring the punishment of the crime of wilfully burning, or causing to be burnt, property insured."[18]

With the gradual building up of a body of insurance laws it was deemed expedient to appoint independent administrative agencies to supervise their enforcement. Before the creation of independent insurance officials such duties were entrusted to fiscal officials, probably because of their knowledge of financial matters.[19] Thus Massachusetts[20] and Pennsylvania[21] delegated this function to the state treasurer. New York[22] required all moneyed corporations to report to the comptroller. Furthermore, a corporation authorized by law to write insurance was a moneyed corporation.[23] The insurance laws of New York were codified in 1849,[24] but the general Life and Health Insurance Law of 1853[25] repealed such parts of the Act of 1849 and the Act of 1851 as applied to life insurance. In Massachusetts the codification of the laws was authorized in 1853[26] and enacted the next year.[27]

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[13] *Mass. Laws from 1780 to 1807* (1807), vol. 2, p. 836, §§ 5, 8.

[14] Patterson, *opus cit.*, p. 524.

[15] Mass. Resolves (1807), ch. 56, p. 39: "Resolved, That the President and Directors of the several incorporated Insurance Companies within this Commonwealth, be, and they are hereby required under oath, on the second Wednesday of the first session of the next General Court, to lay before the legislature a statement of the affairs of the respective companies aforesaid, subscribed by the President and Directors of such companies respectively, as they were on the first day of January last past; which statement shall specify the amount of the capital stock of their respective companies, actually paid in, and in what funds said stock is invested, and the amount of the several kinds of funds respectively; and also particularly specify the Amount of undetermined and subsisting policies of insurance by them subscribed."

[16] N. Y. L. (1814), ch. 49, p. 52. Passed March 18, 1814.

[17] N. Y. L. (1814), ch. 172, pp. 198, 199.

[18] N. Y. L. (1815), ch. 128, p. 129.

[19] Patterson, *opus cit.*, pp. 529, 530.

[20] Mass. Acts. (1827), ch. 141. March 10, 1827.

[21] Pa. Laws (1826-1827), p. 239. April 13, 1827.

[22] Patterson, *opus cit.*, p. 529. Citing N. Y. L., 1827-1828, Pt. I, ch. 18, Title II, §§ 19, 20, 51.

The Creation of Insurance Departments.

The final step in the development of insurance regulation was taken with the creation of a separate, independent office, charged with the execution of the insurance laws.[28] The first board of insurance commissioners was established in New Hampshire in 1851,[29] but it seems to have confined its activities to fire insurance for several years.[30] Massachusetts is generally credited with the establishment of the first insurance department in 1855, consisting of three commissioners on a *per diem* compensation.[31] In 1858 the department was reorganized, the law providing for two commissioners on a salary basis.[32] It was not until 1866 that the duties were entrusted to one commissioner.[33] New York in 1859 charged the single superintendent of the insurance department with the execution of the fairly broad powers conferred upon the comptroller in 1849.[34] One authority[35] is inclined to credit New York with the honor of being the first state "to make its administrative control thorough and effective." In Georgia a statute was enacted establishing an insurance department on January 1, 1860,[36] but the effective date was twice postponed and the law was soon repealed.[37] Connecticut established a department in 1865,[38] Ohio in 1867, and Michigan in 1871.[39] By 1868 some thirty-seven states exercised some supervisory power over insurance companies.[40] About this time, also, two exceedingly important acts were passed in England.[41] The first insurance act of Canada was passed in 1868 and a superintendent of insurance was provided for in 1875.[42]

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[23] McCall, "The Regulation of Life Insurance," *opus cit.*, p. 4.

[24] N. Y. L. (1849), ch. 308.

[25] N. Y. L. (1853), ch. 463, "An Act to provide for the incorporation of life and health insurance companies, and in relation to agencies of such companies." Passed June 24.

[26] Mass. Res. (1853), ch. 82.

[27] Mass. Acts (1854), ch. 453. For a résumé of early Massachusetts insurance laws see *Mass. Ins. Report* (1876), vol. 21, pt. 2, p. 199 *et seq.*

[28] Patterson, *opus cit.*, p. 536.

[29] N. H. L. (1851), ch. 1111.

[30] Lindsay, Forbes, *Text Book of Life Insurance,* Pac. Mut. Life Ins. Co. of Cal. (1916-17), p. 146.

[31] Mass. Acts (1855), ch. 124. In 1852 a Board of Insurance Commissioners, charged with certain limited duties, was created, consisting of the Secretary, Treasurer and Auditor. Mass. Acts (1852), ch. 231.

[32] Mass. Acts (1858), ch. 177. See also *Mass. Ins. Rep.* (1876), vol. 21, pt. 2, pp. 223, 224.

[33] Mass. Acts (1866), ch. 255.

[34] N. Y. L. (1859), ch. 366. Passed April 15, 1859; effective January 1, 1860. N. Y. L. (1849), ch. 308.

Standards of Solvency.

1. *In General.*

For a considerable period of time no standard of solvency was set up by the states. It was fixed first by the insurance commissioner and then by statute.[43] In Massachusetts the commissioners were empowered to fix a suitable standard of valuation.[44] The one adopted was that of the Combined Experience, or Actuaries' Table of Mortality, with interest at four per cent per annum.[45] It received the official sanction of the legislature in 1861.[46] New York in 1866 adopted the English Life Table No. 3 for Males, with interest at five per cent, but changed to the American Experience Table and four and one-half per cent two years later.[47] By 1870 six other states had adopted the New York standard, while four followed Massachusetts. Iowa provided for a double standard.[48]

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[35] Patterson, *opus. cit.,* p. 536. "Even today Massachusetts relies more upon judicial enforcement than does New York."

[36] Ga. L. (1859), Title XII, No. 35. Assented to Dec. 12, 1859.

[37] *Ibid.,* Title XXIV, p. 71; L. (1860), p. 37; L. (1861), p. 51.

[38] Conn. L. (1865), ch. 91.

[39] Ellsworth, F. H., "The Progress of Insurance Through Constructive Regulation," *P. A. L. I. P.* (1920), vol. 14, p. 72. These activities were not always viewed with equanimity by the insurance press. "Pennsylvania is at last afflicted with an Insurance Department. . . . We trust it will be the last." Coast Review, *Insurance Journal,* Hartford, July (1873), p. 112.

[40] Knight, C. K., *"The History of Life Insurance in the United States to 1870,"* Phila. (1920), p. 157.

[41] The Life Assurance Companies Act, 33 & 34 Vict. (1870), ch. 61, passed August 9, and the Married Women's Property Act, 33 & 34 Vict. (1870), ch. 93, passed the same day. The former provided for the filing of annual returns in a fixed form and the latter gave to a married woman the right to effect policies of insurance on her own life or the life of her husband for her own use. See also, Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1886-7), vol. 26, p. 456.

[42] Burke, David, "Canada as a Field for Life Insurance," *J. F. I. I.,* London (1903), vol. 6, pp. 357, 358. The acts were 31 Vict. (1868), ch. 48 and 38 Vict. (1875), ch. 20, § 23.

[43] McCall, "The Regulation of Life Insurance," *opus cit., p.* 7.

[44] Mass. Acts (1858), ch. 177.

[45] Mass. Ins. Rep. (1876), vol. 21, pt. 2, p. 235.

2. *Registered Policies.*

In order to provide additional safety for life policies, securities are sometimes deposited with the insurance department, and held in trust for the benefit of registered policyholders. This practice was introduced in 1866, by the North America Life Insurance Company,[49] which received the right to issue such policies under a special act.[50] Under the law the superintendent, upon delivery of the registered policies, was to "charge the said company the amount of the net present value . . . , valued by the Carlisle table of Mortality, with interest at five per centum per annum, according to the amount and number of premiums paid thereon and the terms thereof." [51]

The plan was so popular that a general act was passed the next year.[52] Section two provided that such policies bear upon their face the words: *"This policy, among a limited number, secured by pledge of public stock or bonds and mortgages."* In this manner the state, through the insurance department, becomes the custodian of the reinsurance fund.[53] The New York Superintendent believed that the compulsory registration of policies would be an effective remedy, "if, in the future history of life insurance companies in this country, evils and practices are developed, subversive and destructive to the public interests . . . ."[54] Other states have similar provisions,[55] although New York prohibited the issuance of such policies subsequent to December 31, 1910.[56]

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[46] Mass. Acts (1861), ch. 186. Georgia had set up a standard of solvency two years previously. Laws 1859, Title 12, No. 35, § 4. "Nor shall he [insurance commissioner] issue a license to any agent or agents of any Life Insurance Company, unless he is satisfied that the cash value of their assets exceeds all the dues and claims against the Company and the calculated present worth of all their future liabilities, counting the rate of mortality at twenty-five per cent above the average of the best tables, and the rate of interest at four per cent, and the annual expenses at the percentage paid by the Company in the preceding year." *Supra,* notes 36, 37.

[47] McCall, J. A., *"A Review of Life Insurance"* (1898), p. 5.

[48] *Ibid.,* p. 6.

[49] *N. Y. Ins. Rep.* (1867), vol. 8, p. lx.

[50] N. Y. L. (1866), ch. 576, vol. 2, p. 1237.

[51] *Ibid.,* p. 1238.

[52] N. Y. L. (1867), ch. 708, vol. 2, p. 1782.

[53] *N. Y. Ins. Rep.* (1867), vol. 8, p. lxvii.

Lack of Uniformity.

A feature of American regulation which has caused the insurance business much perplexity and expense is the lack of uniformity in the various state laws and rulings.[57] In 1868 the United States Supreme Court decided that the issuing of a policy of insurance is not a transaction of commerce, but a simple contract of indemnity against loss.[58] This decision reserved to the respective states full control over insurance matters, although they are subject nevertheless to the supreme fundamental law.[59] To bring about some degree of harmony was one of the purposes of the formation of the National Convention of Insurance Commissioners, which occurred in 1869. Its first important meeting was held in New York in 1871.[60] Through the Convention's efforts much progress in the advancement of uniformity has resulted.[61] Canada, confronted with a similar problem, has made greater progress, having passed "An Act to make Uniform the Law Respecting Life Insurance Contracts."[62] Before its enactment, the laws of the various provinces were, as one writer[63] phrases it, "Interesting for the lawyers but confounding to the companies and the insuring public." At the present time this Act has been adopted by every province with the exception of the Province of Quebec, which still operates under *The Code Napoleon*.[64] The law provides for the "rights and status of beneficiaries, the apportionment of the insurance money, and generally all law respecting life insurance contracts other than that relating to the incorporation, licensing and regulation of life insurers."[65]

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[54] *N. Y. Ins. Rep.* (1869), vol. 10, pt. 2, p. lxxix. For a discussion of the registry system, see *N. Y. Ins. Rep.* (1870), vol. 11, pt. 2, pp. xiii, xiv.

[55] Del. Ins. Laws (1927), pp. 56-60; Fla. L. (1929), ch. 14521; Ill. L. (April 18, 1899, as amended 1907-1921-1927); Kan. Ins. Code (1927), §§ 40-407, 40-408.

[56] N. Y. Ins. L. §§ 73-75.

[57] Huebner, S. S., *Life Insurance,* Appleton, N. Y. (1928), pp. 379-382.

[58] Paul *v.* Virginia (1868), 8 Wall. *(U. S.)* 168. There is little likelihood of change. See N. Y. Life Ins. Co. *v.* Deer Lodge County (1913), 231 *U. S.* 495, 504.

[59] Some states have laws stipulating that the removal of a suit to a Federal court will forfeit a company's license to do business in that particular state. *E. G.,* Ga. Acts (1909), p. 147 and Ill. L. June 4, 1879, §§ 3 & 4. This question came before the Supreme Court a few years ago in the case of Terral *v.* Burke Construction Co. (1922), 257 *U. S.* 529, 532. By Taft, C. J., "The principle established by the more recent decisions of this court is that a State may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the State, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts . . . ." This principle "rests on the ground that the Federal constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law. It follows that the cases of Doyle *v* Continental Insurance Co., 94 *U. S.* 535, and Security Mutual Life Insurance Co. *v.* Prewitt, 202 *U. S.* 246, must be considered as overruled . . . ."

[60] Ellsworth, *opus cit.,* p. 73.

The Armstrong Investigation.

The year 1905 marked a new era in state regulation. In that year occurred an event that profoundly affected the methods of the life insurance business. It was the appointment in New York of the Armstrong Committee "to investigate and examine into the business and affairs of Life Insurance Companies." Public hearings were begun on September 6, 1905.[66] As a result of the disclosures, many other states conducted inquiries into the business and numerous laws were passed in the years immediately succeeding.[67] Many of them vitally affected the policy itself, and it was this period which witnessed the inception of standardized contracts.

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[61] Examples are the work of the Committee of Fifteen, composed of governors and insurance commissioners appointed at a conference of governors, attorneys-general and insurance commissioners held at Chicago, February 1-2, 1906, *infra*, ch. 3; the Uniform War Service Regulations, *P. N. C. I. C.* (1916), vol. 47, p. 153; and the more recent action on the disability clause. *P. N. C. I. C.* (1929), vol. 60, *passim.*

[62] 14 Geo. V (1924), ch. 35. Assented to April 5.

[63] Sims, H. J., "The Uniform Life Insurance Act, Canada," *P. I. I. T.*, (1924-25), vol. 26, p. 185. "The move took concrete form in 1921, when a draft Act was jointly considered by The Canadian Commissioners on Uniform Legislation, The Association of Provincial Insurance Superintendents, The Canadian Life Insurance Officers' Association and representatives of the Friendly Societies. The Commissioners considered the Act at great length at their Annual Conferences in the years 1921 and 1922, and finally adopted it in its present form at their Conference in 1923. It was subsequently approved by The Canadian Life Insurance Officers' Association and the Association of Insurance Superintendents of the Provinces of Canada."

[64] Letter under date of July 31, 1930, to the writer from Charles Heath, Superintendent of Insurance, Province of Manitoba. "The fact that this Act has been in force for over six years without any serious suggestion that it required amendment, is a tribute to the good work done by all those concerned in its preparation."

[65] Foster, R. L., "An Achievement in Uniformity," *A. L. I. C. P.* (1922-24), vol. 2, p. 473. For a detailed account of the act and its provisions see this article as well as one by the same author, "Some Aspects of Canadian Legislation," *P. A. L. C.*, vol. 21 (1926), pp. 109-132, and Sims, *opus cit.*, 185 *et seq.*

It was but natural that a business expanding as rapidly as life insurance, should develop some features requiring the white light of publicity. As early as 1864, Superintendent Barnes encouraged the adoption of high ideals by the companies,[68] but seemingly "the cold-hearted speculator and leech-like stockholder" did not depart.[69] New

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[66] *Testimony Taken before the Joint Committee of the Senate and Assembly of the State of New York To Investigate and examine into the business and affairs of Life Insurance Companies Doing business in the State of New York.* Albany (1905), 10 vols., vol. 1, p. 5.

[67] For an exhaustive survey, see Rhodes, E. E., "Recent Insurance Legislation," *T. A. S. A.* (1907-08), vol. 10, p. 145 *et seq.*

[68] "The practice of Life Insurance is advocated on high grounds of duty, benevolence and religion, for the benefit of helpless infancy, disconsolate widowhood and unprotected orphanage; its official expositors are, therefore, bound to exhibit in their corporate affairs a like spirit and exalted aspiration, and to be governed by a standard of morality rigidly exacting and scrupulously honorable, above and beyond even any legal requirement or interdiction of statute law. The glowing promises of the Prospectus should remain as sacred pledges, never to be violated. Low chicane, vulgar trickery, loose oaths and evasive Statements should all be banished from the armory of the Life Underwriter. The severest rules of the strictest Justice, and the keenest Honor, both in guarding and dispensing their funds, should naturally become incarnated in the Life Manager. Officers, incapacitated by nature or inclination from assuming such relations, have mistaken their true vocation; the cold-hearted speculator and leech-like stockholders should return to their appropriate fields of danger and adventure, and leave the trust funds of other generations to the sleepless care and watchful vigilance of those rare men seemingly born for such sacred guardianship." *N. Y. Ins. Rep.* (1864), vol. 5, pp. lxx, lxxi.

[69] "Unfortunately, in the early history of life insurance in the United States, our companies as a whole, on account of the action of several of them, indeed, of many of them, were in danger of achieving for themselves the reputation which was afterwards obtained by a great assessment society, of being 'the great repudiators.' There was at that time a marked disposition on the part of our life insurance companies,—a thing which is now almost impossible for us to conceive,—to be litigants, and to be particularly and peculiarly unfair as to anything which was not nominated in the bond. The law books up to about 1880 contain an enormous number of decisions concerning life insurance in matters where the companies were technically right in most cases, but were morally wrong." Mr. Dawson, in a "Discussion of Liberality of Modern Policies," *T. A. S. A.* (1912), vol. 13, pp. 105, 113. As a matter of fact, the insurance departments were not always blameless. See, for example, *N. Y. Ins. Rep.* (1873), vol. 14, pt. 2, appendix, pp. 221, 222.

York had had no comprehensive legislative investigation subsequent to that held in 1877,[70] and even at that time "the zeal for reform faded away before anything could be done to correct the abuses that were exposed." [71] After listening to voluminous testimony by many prominent officials and actuaries on all phases of the business, the Committee transmitted its report to the legislature on February 22, 1906, recommending standard policies, allowance for days of grace, the elimination of deferred dividends, reform in investment practices, and limitation of expense incurred in procuring new business.[72] There seems no doubt that the investigation was fairly conducted,[73] although its revelations were at the time "grossly misrepresented and highly magnified by a sensational press"; [74] and that it was extremely beneficial to the institution of life insurance.[75] Investigations similar in nature were conducted in various states, among them Massachusetts,[76]

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[70] N. Y. Investigation, *opus cit.*, vol. 1, p. 11. But the Insurance Act of 1892, ch. 690, was comprehensive.

[71] Price, W. H., "Life Insurance Reform in New York," *Pub. Am. Econ. Ass'n.* Third Series (1909), vol. 10, no. 4, p. 1, footnote 1.

[72] N. Y. Investigation, Report, *opus cit.*, vol. 10.

[73] Fiske, Haley, "Fifty Years of Life Insurance," *P. A. L. I. P.* (1925), vol. 19, p. 121." ". . . in the conduct of the investigation and the resulting legislation, the business owes a debt it can never repay to Charles Evans Hughes. Mr. McCall told me not long before he died that Mr. Hughes had been eminently fair; and there could be no better witness quoted."

[74] Hartigan, J. A., "A Departmental View of Uniformity," *P. A. L. I. P.* (1908), vol. 3, p. 17.

[75] Lunger, J. B., "The Influence of Competitive Concessions on Legislation in Life Insurance," *P. A. L. I. P.* (1914), vol. 8, p. 76. "At the outset it was hard for me to view, in a temperate frame of mind, the enactment of such laws. I had been too busy, perhaps, to observe the effects of unfettered ambition and untrammeled competition in other lines of business, or to consider the changing conditions which were creeping into life insurance.

"However, it did not take me long to become reconciled to the situation; in fact quite a convert to State regulation. I should like to say my change of base was due solely to the intrinsic merit of the new laws, but I must confess that I was chiefly influenced by the hope that in regulation might be found a way to enforce a settlement of the questions which we have never been able to agree upon amongst ourselves. I could not recall a single conference called for general good that had effected a lasting reform or many that had led even to temporary benefit." Compare *supra,* note 1.

[76] "Report of the Commission to Recodify the Insurance Laws, Mass. June, 1906." Pub. in *Testimony taken before the Select Committee of the Senate of New Jersey, Appointed April, 1906, to Inquire Into the Business of Life Insurance Companies Doing Business in New Jersey,* Patterson (1906), 4 vols., vol. 2, pp. 483-529.

New Jersey,[77] and Wisconsin.[78] Canada too was active.[79] Many of the state legislatures were guided by the Report of the Committee of Fifteen, which met in Chicago in 1906, and on December 1 published recommendations for uniform legislation.[80] The nature of the legislation enacted during this period will be considered generally in the treatment of standard policies, and specifically in the discussion of the various clauses.

Standard Policies

Reasons for Standard Policies.

Although the use of standard policies in life insurance is but a recent development, Florence prescribed policy forms as early as 1523.[81] Liberty of choice has been greatly restricted by standardized contracts.[82] While it is a well-recognized principle of law that the parties to a contract are bound by its written terms,[83] the growth of insurance policies has been such that some sort of protection was required to prevent injustice to the insured.[84] In the early days of insurance the insured needed no protection; on the contrary, it was the underwriter who was helpless, and even so brilliant a judge as Lord Mansfield insisted upon a strict compliance of the warranties inserted for the insurer's benefit.[85] With the rapid spread of fire and life insurance to a class unfamiliar with complex financial transactions the situation had become reversed.[86] Kinds of policies and forms of insurance were numerous, literally hundreds having been devised and used to induce the public to insure.[87] Courts early recognized the helplessness of the insured, a New Hampshire judge writing the decision which has become a classic.[88] Although the superintendent in New York still was willing in 1869 to trust to competition,[89] Commissioner Row of Michigan was not so optimistic.[90] Some states required stipulations to be printed in type as large as long primer or to be written in with pen and ink.[91] Probably because the fire policy is burdened with many more limitations than are found in the life contract,[92] it was the first to receive the attention of the legislators.

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[77] N. J. Investigation, *opus cit.*

[78] *Report of Wisconsin Life Insurance Investigating Committee* (1907).

[79] *Report of the Royal Commission on Life Insurance, Ottawa* (1907), 7 Edward VII, Sess. Pap. No. 123a.

[80] "Report of Committee Appointed at Conference of Governors, Attorneys General and Insurance Commissioners, held at Chicago February 1-2, 1906." Pub. in N. J. Investigation, *opus cit.*, vol. 3, pp. 927-995.

[81] Holdsworth, W. S., "The Early History of the Contract of Insurance" (1917), 17 *Col. L. R.*, p. 92, footnote.

[82] "In large measure this process of standardization has been brought about by business practices independently of legal sanctions. In the case of contracts between insurer and insured, however, the state has undertaken to furnish the service of standardizing, or at least supervising the work of standardizing the policy forms in several of the most popular branches of insurance. So far has the movement progressed in these fields that the question is no longer: 'Shall the state restrict the individual liberty of the insurer and insured by prescribing the terms and legal incidents of a relation voluntarily assumed?' or even 'Has the legislature the power to impose restrictions?' but rather '*How* shall the state control the standardization of insurance policy forms?'" Patterson, *opus cit.*, pp. 244, 245.

[83] Vance, *opus cit.*, p. 30.

[84] Van Schoick *v.* Niagara Fire Ins. Co. (1877), 68 *N. Y.* 434, 438. So again comes up the question "whether a fact, thoroughly well known and comprehended by both sides to the contract before it is delivered, may, by force of some condition, crouched unseen in the jungle of printed matter with which a modern policy is overgrown, make a defense for the company, after the catastrophe and damage has happened against which it professes to guard."

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[85] Vance, W. R., "The History of the Development of the Warranty in Insurance Law" (1910-11), 20 *Yale L. J.* 523.

[86] Patterson, *opus cit.* See also Bourgeois *v.* Northwestern National Ins. Co. (1893), 86 *Wis.* 606, 609. Winslow, J. (referring to the act requiring standard fire policies): "This act is broad and sweeping in its terms and scope. It aims to bring order out of chaos. Prior to its passage there were as many different contracts of insurance as there were companies. The variations and differences between the conditions of the policies issued by the various insurance companies were almost infinite in number; new clauses and conditions were being constantly inserted, generally ingeniously worded and obscurely printed; and, singularly enough, these new conditions were always in the interest of the insurer, and not of the insured."

[87] Pierson, I. C., "Brief Statement of the Development of Actuarial Science in the United States of America," *T. A. S. A.* (1901-03), vol. 7, p. 7.

[88] De Lancey *v.* Rockingham Farmers Mut. Fire Ins. Co. (1873), 52 *N. H.* 581, 587. Doe, J.: "The principle act of precaution was to guard the company against liability for losses. Forms of applications and policies (like those used in this case), of a most complicated and elaborate structure, were prepared, and filled with covenants, exceptions, stipulations, provisos, rules, regulations, and conditions, rendering the policy void in a great number of contingencies. These provisions were of such bulk and character that they would not be understood by men in general, even if subjected to a careful and laborious study; by men in general, they were sure not to be studied at all. The study of them was rendered particularly unattractive, by a profuse intermixture of discourses on subjects in which a premium payer would have no interest. This compound, if read by him, would, unless he were an extraordinary man, be an inexplicable riddle, a mere flood of darkness and confusion. Some of the most material stipulations were concealed in a mass of rubbish, on the back side of the policy and the following page, where few would expect to find anything more than a dull appendix, and where scarcely any one would think of looking for information so important as that the company claimed a special exemption from the operation of the general law of the land relating to the only business in which the company professed to be engaged. As if it were feared that, notwithstanding these discouraging circumstances, some extremely eccentric person might attempt to examine and understand the meaning of the involved and intricate net in which he was to be entangled, it was printed in such small type, and in lines so long and so crowded, that the perusal of it was made physically difficult, painful, and injurious. Seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the suppression of it. There was ground for the premium payer to argue that the print alone was evidence, competent to be submitted to a jury, of a fraudulent plot. It was not a little remark-

The Fire Policy.

The movement toward standardization was started in 1867 and 1868 by the National Board of Fire Underwriters. This organization, composed of most of the companies of the country, adopted a form of policy for universal use.[93] In May, 1867, Connecticut passed a uniform fire policy law,[94] but it was repealed the following year.[95] Massachusetts is regarded as the pioneer in such legislation,

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able that a method of doing business not designed to impose upon, mislead, and deceive him by hiding the truth, practically concealing and misrepresenting the facts, and depriving him of all knowledge of what he was concerned to know, should happen to be so admirably adapted to that purpose. As a contrivance for keeping out of sight the dangers created by the agents of the nominal corporation, the system displayed a degree of cultivated ingenuity, which, if it had been exercised in any useful calling, would have merited the strongest commendation."

[89] *Insurance Monitor* (1869), vol. 17, p. 713.

[90] "The policy contracts used by insurance companies are probably the most ingenious and binding of all legal mechanism ever invented. Very many life insurance companies have taken advantage of every adverse decision against the policy-holder, and have framed a contract entrenched behind an application signed by the insured, constituting a maze of the most technical and unyielding conditions. It is claimed that these conditions in the policy and application are necessary for the protection of the companies against fraud, and that they are never taken advantage of except in case of intended deception and fraud. But the great difficulty is that the management of a company may exercise most unjustly and arbitrarily the power which an innocent party has placed unwittingly in their hands . . . ." Michigan Life Report, quoted in *Insurance Monitor* (1875), vol. 23, p. 557. The Monitor disagrees, *ibid:* "The complicated policy form is the outgrowth of successive defeats, it represents the arduous efforts of insurance corporations to obtain justice . . . ."

[91] *Insurance Monitor* (1878), vol. 26, p. 457. This was considered good legislation at the time.

[92] English, J. L., "The Life Policy Contract," *Report Ins. Insti. of Hartford, Inc.* (1914), vol. 7, p. 57.

[93] Oviatt, F. C., "Standard Fire Insurance Policy," Insurance, Annals, *opus cit.,* pp. 182, 183. Its use did not extend much beyond New York City.

[94] *Insurance Monitor* (1867), vol. 15, p. 705.

[95] Conn. L. (1868), ch. 7, repealing Conn. L. (1867), ch. 121.

with the Statute of 1873,[96] prescribing the exact wording of the policy.[97] Many of the states granted to the insurance commissioner the right to prescribe the form, *e. g.,* New Hampshire, 1885; New York, 1886; Minnesota, 1889; Pennsylvania, 1891; Wisconsin, 1891.[98] Most of the above laws were declared unconstitutional on the ground that they were a delegation of legislative authority,[99] although there seems no doubt that standard policies may be prescribed, if the necessary legislation is enacted in a constitutional manner.[100] In 1924 a Wisconsin court reviewed the question with respect to life policies.[101] While the earlier decisions relating to delegation of legislative authority have not been entirely discredited, more recent cases indicate a different attitude.[102] In 1908 the Massachusetts court upheld a statute[103] which prescribed standard clauses for life policies, but reserved to the commissioner of insurance the right to pass on forms required to be submitted by the companies, subject to review by the Supreme Judicial Court.[104]

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[96] Mass. Acts (1873), ch. 331. This applied to fire policies and was voluntary. Various states had passed legislation prior to this, limiting the form of the policy or in some way curtailing the rights of the companies. *E. G.,* Mass. Acts (1861), ch. 152; Mass. Acts (1864), ch. 196; N. H. L. (1855), ch. 1662, § 6; Ohio L. (1872), p. 150, § 32; Wis. L. (1874), ch. 60, § 1.

[97] Patterson, *opus cit.,* p. 247 *et seq.* There are three types of regulation employed: "1. Legislative prescription of the exact wording of the policy; 2. Administrative prescription of the exact wording of the policy; 3. Legislative prescription of typical provisions or standards, to be administered by a single official having approval, disapproval, and dispensing powers."

[98] Patterson, *opus cit.,* 249.

[99] Thus, the Michigan Law of 1881, No. 149, was declared unconstitutional in King *v.* Concordia Fire-Ins. Co. (1905), 140 *Mich.* 258; the Minnesota Law of 1889, ch. 217, in Anderson *v.* Manchester Fire Assur. Co. (1894), 59 *Minn.* 182; the Pennsylvania Act of 1891, P. L. 22, in O'Neil et al. *v* Am. Fire Ins. Co. (1895), 166 *Pa.* 72; the Wisconsin Law of 1891, ch. 195, in Dowling and another *v.* The Lancashire Ins. Co. (1896), 92 *Wis.* 63. Pinney, J., p. 68: "That no part of the legislative power can be delegated to any other department of the government, executive or judicial, is a fundamental principle of constitutional law, essential to the integrity and maintenance of the system of government established by the constitution." Further, p. 75, the provision of ch. 195, Laws of 1891, "authorizing the insurance commissioner to prepare, approve, and adopt a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements, or conditions as may be indorsed thereon or added thereto and form a part of such contract or policy, and that such form shall, as near as the same can be made applicable, conform to the type and form of the New York standard fire insurance policy, so called and known, is unconstitutional and void." See also Phenix Ins. Co. *v.* Perkins (1905), 19 *S. D.* 59. The constitutionality of the New York Act seems never to have been attacked. Vance, "Handbook," *opus cit.,* p. 42.

[100] Re Opinion of Justices, Re Standard Insurance Policy (1903), 97 *Me.* 590, 592: "The question submitted is, therefore, narrowed down to this: Is the Legislature inhibited by any provision in the Constitution of the United States, or of this state, from exercising the power of thus limiting incorporated insurance companies to the issuance of one standard form of fire insurance policy . . . ?

"We do not find in either Constitution, Federal or State, any section or clause in terms inhibiting such an exercise of the legislative power over fire insurance companies." The court based its opinion on the fact that since all powers of a corporation are derived from the legislature, the latter, subject to some limitations, may cut them away.

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[101] State ex. rel. U. S. Fid. & Guar. Co., Appellant *v.* Smith, Comm. of Ins., Res. (1924), 184 Wis. 309, Jones J., pp. 319, 320: "There is no longer doubt that a state has the power to prescribe standard policies with respect to fire insurance and to limit insurance companies, domestic or foreign, to the issuance of policies on property within the borders of the state.

"Statutes of this character have been adopted in many states, and in some states statutes exist the object of which is to standardize policies of life and accident insurance. These statutes are based on the theory that the business of insurance so far affects the public welfare that it is a proper subject for regulation by the state.

"Experience showed that without such regulation in both fire and life policies there was an infinite variety in the forms of contracts. Ingenious and ambiguous clauses, often in print almost illegible, were inserted in such a manner that policy-holders often suffered grievous injustice.

"That insurance contracts are so far matters of public interest that they may be reasonably regulated under the police power is illustrated by statutes which have been generally upheld in our own and many states as to the effect of false representations and warranties.

"Although the legislature may not delegate to officers the power to prescribe the form of insurance contracts, . . . it can leave to administrative officers like insurance commissioners the proper administration of statutes relating to standard provisions in policies."

See also State ex. rel. Time Ins. Co. *v.* Smith, Comm. of Ins. (1924), 184 *Wis.* 455; Aetna Life Ins. Co. *v.* Hardison (1908), 199 *Mass.* 181; N. Y. Life Ins. Co. *v.* Hardison (1908), 199 *Mass.* 190, and numerous cases there cited, p. 198.

[102] State ex. rel. Martin *v.* Howard (1914), 96 *Neb.* 278; Travelers Ins. Co. *v.* Industrial Comm. (1922), 71 *Col.* 495.

[103] Mass. St. (1907), ch. 576, § 75.

[104] Aetna Life Ins. Co. *v.* Hardison (1908), 199 *Mass.* 181; N. Y. Life Ins. Co. *v.* Hardison (1909), 199 *Mass.* 190, 197. Knowlton, C. J.: "The insurance commissioner is an administrative officer. The Legislature prescribed the requirements in the forms of policies. It did not see fit to prescribe a standard form for life insurance companies, but stopped with an enactment of substantive provisions for all policies. It was proper to leave to the insurance commissioner the management of details in the administration of the law. It was proper to prohibit the use of policies that did not conform to the law, and to punish disobedience on the part of an insurance company. It was a reasonable regulation to require companies to submit the forms of policies to the insurance commissioner before using them, so that he could see whether the law was being obeyed. His duty was to approve of every form of policy that seemed to him correct."

The Life Policy.

The need of standardized policy forms in life insurance, voiced by at least two insurance departments,[105] was recognized by the legislation spread upon the statute books as a result of the Armstrong investigation in New York.[106] The Committee recommended the establishment of standard forms for ordinary life, limited payment life, endowment, and term policies, since these constituted by far the greater part of the outstanding policies. Other sorts of policies were permitted upon approval of the superintendent, suggestion being made that he confer with the companies to secure some degree of standardization among these forms too. Proper modification was made for companies not transacting business upon the mutual plan.[107] These recommendations were adopted by the legislature and went into effect January 1, 1907.[108] The standard forms gave to policyholders many rights which were formerly privileges offered by the more liberal companies.[109] Among the more prominent were a change of beneficiary clause, a provision for choice by the insured as to whether or not the appointment of the beneficiary should be revocable, the right to a grace period, provisions regarding incontestability, suicide, and occupational limitations, the right to obtain loans, automatic extended insurance after three years, and reinstatement, as well as various optional modes of settlement.[110]

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[105] *Mass. Ins. Rep.* (1890), vol. 35, pt. 2, pp. xxxiii, xxxiv. There is more need of a standard policy in life than in fire insurance because in the latter the insured is usually living and can give testimony. *Ibid.* (1906), vol. 51, pt. 2, p. xxxii. After pointing out the numerous different policy forms, the report continues: "But there are policies which do possess ambiguous provisions and some whose language is so technical, involved and obscure that it is almost impossible to interpret them. There are forms that especially offend as deceitful contracts.

"All these pitfalls for the feet of the great multitude of the unwary in life insurance matters can be removed, and ought to be removed, just as in fire insurance, by the adoption of standard forms . . . ." See also *supra,* note 82.

[106] *Supra,* note 67.

[107] N. Y. Investigation, *opus cit.,* vol. 10, pp. 439, 440.

[108] N. Y. L. (1906), ch. 326, § 101, p. 798. "Standard forms of policies.—On and after the first day of January, nineteen hundred and seven, all policies of insurance, other than industrial policies, issued or delivered within this state by any domestic life insurance corporation, shall be in the forms hereby prescribed and not otherwise save as hereinafter provided. There shall be four standard forms of policies, to wit: (1) An ordinary life policy, (2) a limited payment life policy, (3) an endowment policy, and (4) a term policy. The said standard forms shall be as follows:" Here follow the four forms in detail.

[109] Moir, Henry, *Life Assurance Primer,* Spectator Co., N. Y., 3d Ed. (1912), p. 30.

Some doubts as to the constitutionality of the law were expressed, but it seems never to have come before the courts.[111] Most writers agree, however, that it was inexpedient.[112] A member of the New York insurance department has written as follows of the experience of that state with the prescribed forms:[113]

> Several of the States have had recent experience with standard policy provisions, but only one, I think, has undertaken to adopt bodily a compulsory State-made life insurance form. Everybody seems to agree that standard fire policies are workable and satisfactory, but certainly that has not been our experience with the New York standard form of life policy. One trouble was that the law did not apply to other than domestic companies, and that the non-standard forms proved better sellers than the State-made article. Soon it became apparent that the requirements of life insurance demand contracts that are elastic and progressive and which can be readily changed to suit new

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[110] N. Y. L. (1906), ch. 326, § 101.

[111] Nichols, W. S., "Is the New York Standard Life Policy Act Constitutional?" *T. A. S. A.* (1905-06), vol. 9, pp. 338-343. For the written discussion see *ibid.* (1907-08), vol. 10, p. 95.

[112] "What the companies objected to was the necessity of giving up unusual contracts. A rigid uniformity is opposed in principle to a flexible system naturally lending itself to the exact needs of the policy-holder and company." Price, *opus cit.*, p. 32. "By prescribing forms in any rigid manner, legitimate competition of the best kind is destroyed, and progress toward liberality ceases." Moir, *opus cit.*, p. 31. "A most unwise enactment, when we consider that the attractiveness and usefulness of the modern policy contract have resulted largely from free competition among companies, each exercising its ingenuity to make its own form the most attractive." *An Epoch in Life Insurance*, Met. Life Ins. Co., N. Y. (1924), p. 89. "Unlike life insurance, the essential features of a fire insurance contract can be readily embodied in a single rigid form. . . . The fire insurance contract is simple in its character and of short duration. Defects and shortcomings in its form admit of speedy remedy. The complex problems of life insurance are beyond the grasp of any but the trained expert, any errors in its contract forms are mistakes of a lifetime, which may bring ruin on the institution." Nichols, *opus cit.*, p. 343. "The present liberality of our policy forms have been brought about by the companies themselves and not at the suggestion of Government supervision, and the insuring public have no reason to complain that the companies have not been very generous in this respect." Bain, W. A., "Plans of Assurance and Policy Writing," *P. I. I. T.* (1910-11), vol. 12, p. 77. See also Bradshaw, Thos., "Notes on the Insurance Act 1910, Dominion of Canada," *J. I. A.* (1911), vol. 45, pp. 505, 538.

[113] Appleton, Hon. H. D., Dep. Supt. of Ins. of N. Y., "Wherein Have Insurance Conditions Improved During the Past Twenty Years in the Field of Life Insurance," *P. N. C. I. C.* (1915), vol. 46, pp. 97, 98.

circumstances. After a brief three years of experience, the law was modified to permit the use of company-made policies containing certain required provisions and subject to certain prohibitions. The theory of standard forms proceeds upon the assumption that the State can formulate a better contract than the private companies under the stimulus of wholesome competition can devise. The case for the State is not very strong. It involves also the assumption that ultimate perfection in life insurance is expressed in the standard form, which thus becomes the last word upon the subject. During the years that the standard policy law was in effect, there was no substantial improvement in the forms. Since its repeal and the adoption of standard provisions, a large number of new policies have been approved by the Insurance Department. Many of them contain new features that have developed as the result of changing conditions which a fixed form could not meet. Another argument for a standard policy is that it can be used in every State. The history of the New York standard form will show that it was not acceptable in all States. On the other hand, several forms which have received Department sanction under the amended law, are acceptable in every State in the Union. The function of the State should be to see that fair and honest contracts are offered for sale. Standard provisions serve to minimize the amount of discretion necessary to be exercised by the Insurance Department without discouraging improvements and the development of valuable policy features. They are decidedly preferable to standard forms.

The act was held by the attorney-general to apply only to the domestic business of domestic companies.[114] Thus, perhaps for the first time in history, a state had passed a law discriminating against its own citizens in favor of citizens of other states. A foreign company might deliver in New York policies that New York insurance companies could not deliver; nor could the latter write both participating and non-participating business, a right not prohibited the former.[115]

Standardized Clauses.

The provision prescribing policy forms was repealed several years after its enactment, and substantially the present requirements substituted.[116] Under this law all policies must contain certain clauses which establish minimum standards of liberality, although companies may issue policies which are more favorable to the insured. Statutes of this nature are typical of those passed in many states, although some, in addition, prohibit absolutely the inclusion of certain clauses. As contrasted with the above laws which require only substantial compliance, a few statutes set forth the clauses to be inserted in policies.[117]

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[114] Rept. of Atty. Genl. (1906), p. 549; *ibid.* (1907), p. 527.

[115] *J. I. A.* (1907), vol. 41, pp. 528, 529.

[116] N. Y. L. (1909), ch. 301, § 7, p. 562. This law, slightly modified at various times, is now section 101 of the N. Y. Ins. Law. For a copy of the provisions see Appendix XVI.

New York was the only state that made the use of a rigid form compulsory,[118] although a few states have promulgated complete *optional* standard forms.[119] The commissions appointed in the other states to study the question of standardization were convinced that the requirement of certain standard clauses was the better plan.[120] Administrative control through approval, disapproval and dispensing powers is the method generally used with respect to life forms.[121] Patterson, in his admirable study of the insurance commissioner, concludes thus:[122]

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[117] Ill. L., approved May 20, 1907, as amended 1909-1917-1921-1927; Burns Ind. Sts. (1926), §§ 9036, 9037; Mass. Gen. L., ch. 175, § 132; N. J. L. (1907), ch. 72, as amended P. L. (1922), ch. 168, P. L. (1925), ch. 179; Pa. L. (May, 1921), P. L. 682, art. IV, §§ 410, 411; Wis. Sts. (1921) § 1948 m, (1923), ch. 291, § 3. Ill., Ind., N. J. and Pa. have prohibited clauses. See *infra,* note 119.

[118] Moir, *opus cit.,* p. 31.

[119] Thus in Minnesota (Mason's Minn. St. 1927, § 3399) complete forms are prescribed for (1) "ordinary" or "limited payment" life; (2) endowment; (3) "ordinary" or "limited payment" life fixed survivorship annuity; (4) endowment fixed survivorship annuity; (5) term; (6) term with right to renew and change. Any policy issued in the state must be one of these or it must contain provisions as set forth in §§ 3402, 3403, 3406. Similar laws are found in Ohio (Page's Gen. Code 1926, §§ 9412-9417) and North Dakota (N. D. Comp. Laws 1913, § 6635-6635 d).

[120] Thus the Committee of Fifteen *opus cit.,* p. 929, recommended "1. An act establishing standard forms of policies which *may* be issued by life insurance companies, and providing further that if such forms are not used, certain standard provisions shall be included in all policies and certain prohibited provisions omitted, which bill further provides that all policies, before being issued, must be submitted to the insurance commissioner." The Committee of Fifteen was much less radical than the Armstrong Committee. Appleton, *opus cit.,* p. 95. Mass. did not favor a standard form, (Rep. of Mass. Comm. *opus cit.,* p. 522) nor New Jersey, (N. J. Investigation, *opus cit.,* vol 4, p. 14) nor Wisconsin, (Rep. of Wis. Comm., *opus cit.,* p. 195) nor Canada (Rep. of Royal Comm., *opus cit.,* p. 189.). For a discussion of the Canadian provisions, see Bain, *opus cit.,* p. 77, and Bradshaw, *opus cit.,* p. 505.

[121] Patterson, *opus cit.,* p. 258 *et seq.* A very comprehensive treatment of this question.

[122] *Ibid.,* p. 268.

To say that administrative control over insurance policy forms has accomplished more good than harm is to give it faint praise. To say that it was inevitable, given the American business and political environment, is not too much. It can scarcely be doubted that judicial theories as to delegation of power, and legislative incompetency in drafting administrative statutes, caused it to lag considerably behind the social demand for it. Much remains to be done before it will be completely adapted to the tasks in hand.

CHAPTER IV

THE NATURE OF THE LIFE POLICY AND THE GENERAL RULES UNDERLYING ITS CONSTRUCTION

The history of the life insurance policy is the history of the institution itself.[1] The written name of the contract is derived from the Italian.[2] Many writers testify to the remarkable character of this instrument, both as to its inherent constitution[3] and the qualities it inspires.[4] The brilliant Pothier characterized the contract of life insurance as one of the most extraordinary and interesting that the genius of man has produced.[5] The company is charged with its faithful execution, but, save in its inception, the insured may break his part of the agreement at will. Statute modification of the defenses of representations and warranties, as well as the introduction of incontestable clauses, deprives the company of defenses available to parties in ordinary contracts. Even a material increase in the hazard does not permit cancellation, and gross negligence in bringing about the loss, even suicide, is no defense.[6]

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[1] English, J. L., "The Life Policy Contract," *Rep. Ins. Inst. of Hartford, Inc.* (1914), vol. 7, p. 44.

[2] "The word 'Polizza,' in Italian, signifies any note or memorandum in writing, creating, or evidence of a legal obligation; and hence the name is applied, with the same propriety, to a bill of exchange, a promissory note, and even to a receipt for money as to the written agreement of insurance." Duer, John, *The Law and Practice of Marine Insurance,* N. Y. (1845), vol. 1, p. 29.

[3] ". . . the American life policy as it stands today is one of the most remarkable instruments of civilization. As a legal contract between one party and another it is a curiosity. One party agrees to do certain things in consideration of certain things done, and of the correctness of certain statements made, by the other party; and yet it has come to pass that after a short time, a year or two at most, one of the parties is relieved of all responsibility for most of his part of the agreement while the other party, the Company, is held to strict accountability for every agreement expressed or implied in the policy contract during the entire life of the policy which may be one hundred years or more . . ." English, *opus cit.,* p. 44. "The insurance company and its contracts have a place in the statutes and in the courts unknown to any other company and to any other contract; the company has been the sport of legislatures and its contracts the football of the courts." Finch, J. A., "The Law of Insurance in the Law School," *Rep. Am. Bar Ass'n* (1897), vol. 20, p. 496.

[4] "The life insurance policy is the highest form of contract thus far devised by the human mind.

"There is selfishness and greed in every other form of commercial endeavor, but the essence and result of the life insurance contract is faith, compassion, love and foresight." Blackburn, T. W., "The Life Insurance Contract, Being Unique, Should be So Considered and Treated by Courts and Law Makers," *P. A. L. I. C.* (1913-21), Paper No. 13, p. 1.

[5] Pothier, *Traité du Contrat d'Assurance,* Estrangin Edition, Marseille (1810), p. IX. "Le contrat d'assurance est un des plus remarquables et des plus intéressans, que le génie de l'homme ait produit. Mis en usage longtems après tous les autres contrats maritimes, il s'est, pour ainsi dire, élevé

Characteristics of Insurance Policies.

A policy of insurance is a written or printed form[7] embodying the details of the agreement between the parties.[8] Blackstone defined it as a "contract between A. and B., that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event."[9] It is distinguished by the presence of five elements:[10]

(a) The insured possesses an interest of some kind susceptible of pecuniary estimation, known as insurable interest.

(b) The insured is subject to a risk of loss through the destruction or impairment of that interest by the happening of designated perils.

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tout d' un coup au-dessus d'eux, et a fixé l'attention par la profondeur de ses combinaisons, l'importance de ses services, la beauté de ses règles, et l'infinie variété des cas auxquels elles reçoivent leur application."

[6] Blackburn, *opus cit.,* p. 2.

[7] "Unless forbidden by statute or other positive regulation, it is not necessary to the validity of a contract to insure that it be in writing." Aetna Ins. Co. of Hartford *v.* Licking Valley Milling Co. (1927; C. C. A. 6), 19 *F.* (2d) 177, 180. But because of the many conditions a written instrument is much more satisfactory. ". . . although there are a few early cases in which oral contracts of insurance were declared invalid, on the ground that they would encourage fraud, so far as the law is now concerned, a parol contract of insurance or agreement to insure is valid (in the absence of a statutory requirement, or other positive regulation to the contrary), provided it is complete and the minds of the parties have met as to all of the essential elements." Couch, G. J. *Cyclopedia of Insurance Law,* Lawyers Co-operative Pub. Co., Rochester (1929), vol. 1, p. 127, § 78. ". . . However, express statutes have been enacted in some jurisdictions, which change this rule, and in many instances other statutory provisions, as well as charter requirements affect the question of the necessity for a writing." *Ibid.,* p. 128, § 80.

[8] *Ibid.,* vol. 1, p. 87, § 65. ". . . it may be said that a contract of insurance is in its nature aleatory, voluntary, executory, synallagmatic, conditional, and personal, and, except as to life and accident, that it is one of indemnity and insurance for the benefit of others is an ambulatory contract." *Ibid.,* p. 5, § 3.

[9] 2 *Blackstone Commentaries* (Lewis Ed.) XXX, p. 458.

[10] Vance, W. R., *Handbook of the Law of Insurance,* 2d ed., West. Pub. Co., St. Paul (1930), p. 2.

(c) The insurer assumes that risk of loss.

(d) Such assumption is part of a general scheme to distribute actual losses among a large group of persons bearing similar risks.

(e) As consideration for the insurer's promise, the insured makes a ratable contribution to a general insurance fund, called a premium.

A contract possessing only the three elements first named is a risk-shifting device, but not a contract of insurance, which is a risk-distributing device; but, if it possesses the other two as well, it is a contract of insurance, whatever be its name or its form.

The validity of a policy of insurance depends upon the same common law principles that apply to every other legal contract.[11] The agreement between competent parties, resulting from an offer and acceptance, must comply with legal requirements as to form and have for its purpose a legal object. It must be made with full knowledge of material facts and be free from fraud, mistake, or misunderstanding. It is necessary that there should be certain risks or perils, a duration for the risk, and a limit on the amount of the insurance. Unless bearing a seal, it must be supported by a valuable consideration, and an insurable interest.[12] Such a policy is a species of property in the nature of a chose in action.[13]

A Contract Uberrimae Fidei.

A policy of insurance is a contract *uberrimae fidei,* that is, one requiring the utmost good faith between the parties. This has been endorsed by the courts times without number.[14] Justice Story thus explains the reasons for the doctrine: [15]

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[11] Jefferies, J. H., "Lapse and Reinstatement," *Insurance,* Ann. Am. Acad. Pol. and Sos. Sci., Phila. (1905), p. 90. See also St. John *v.* The Am. Mut. Life Ins. Co. (1855), 13 *N. Y.* 31, 39.

[12] Jefferies, *opus cit.,* Couch, *opus cit.,* vol. 1, p. 79, § 57; Vance, *opus cit.,* p. 89.

[13] Couch, *opus cit.,* vol. 1, p. 50, § 34; St. John *v.* The Am. Mut. Life Ins. Co. (1855), 13 *N. Y.* 31, 39. A chose in action has been defined as follows in *Webster's New International Dictionary* (1927). In its widest sense, it is "any right to a thing personal not in one's possession or actual enjoyment, but recoverable by suit at law; esp., now, any right to an act or forbearance under a contract, as in case of debts, stocks, shares, and negotiable instruments, or for a tort connected with a contract. Also sometimes, loosely, the thing, as a bond or note, which is the subject of this right."

[14] Syder, E. W., "The Life Assurance Contract," *J. C. I. I.* (1913), vol. 16, p. 297.

[15] McLanahan *v.* Universal Ins. Co. (1828), 1 Pet. *(U. S.)* 170, 185. "This doctrine is supported by the English as well as the American authorities, and

The contract of insurance has been said to be a contract *uberrimae fidei,* and the principles which govern it, are those of an enlightened moral policy. The underwriter must be presumed to act upon the belief, that the party procuring insurance, is not, at the time, in possession of any facts, material to the risk, which he does not disclose; and that no known loss had occurred, which, by reasonable diligence, might have been communicated to him. If a party, having secret information of a loss, procures insurance, without disclosing it, it is a manifest fraud, which avoids the policy. If, knowing that his agent is about to procure insurance, he withholds the same information, for the purpose of misleading the underwriter, it is no less a fraud.

Features Peculiar to Life Policies.

Compared with insurance contracts in general, the life policy has certain features which are peculiar to it alone. The term extends usually for life, the premium remaining fixed. In addition to the protection which is offered, there is present in a varying degree, save in term policies, an element of investment. Again with the exception of term policies, the hazard insured against is certain to occur.[16] The types commonly used are term, ordinary life, limited-payment life, and endowment, those covering the whole duration of life being most popular.[17] The term policy is one in which the company agrees to pay in case of death within a limited period, as five, ten, or twenty years. In the ordinary life form, payment is made upon death and premium payments continue for the duration of life, while in limited-payment policies the insured contracts to pay only for a certain

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particularly by Watson *v.* Delafield (1 Johns. 152; 2 Caines 224; 2 Johns. 526), where most of the early cases are collected, and commented upon, . . ." See also Park, J. A., *Marine Insurances,* London, 8th ed. (1842), 2 vols., vol. 2, p. 932; Goram *v.* Sweeting (1682), 2 Wms. Saund. *(Eng.)* 200, the notes in this case on many marine insurance points being very full; Wolff and Others *v.* Horncastle (1798), 1 Bos. & P. *(Eng.)* 316, 322; Stipcich *v.* Met. Life Ins. Co. (1928), 277 *U. S.* 311, 316; and a recent discussion in Cummings *v.* Conn. Gen. Life Ins. Co. (1928), 101 *Vt.* 73.

[16] Huebner, S. S., *Life Insurance,* Appleton, N. Y. (1928), pp. 152-154; Mowbray, A. H., *Insurance,* McGraw-Hill, N. Y. (1930), ch. X.

[17] According to the *N. Y. Ins. Report* (1929), vol. 70, pt. 2, p. IX, at the close of business in 1928 companies doing business in New York had 22,454,695 ordinary policies in force, insuring $64,367,443,227. Whole life comprised approximately 15,200,000 in number and $42,500,000,000 in amount; endowment, 5,700,000 for $9,500,000,000; and term, etc., 1,500,000 for $4,700,000,000.

definite period. The endowment policy is paid upon death or at the expiration of the prescribed period; and here also the premium may be payable throughout either the whole policy period or some shorter term.[18]

There are usually three parties to the life contract, designated in this country as the insured,[19] the subject upon whose life the policy is written; the insurer, the one agreeing to pay the insurance; and the beneficiary,[20] the one to whom payment is made.[21] The basis of the contract is a proposal in the form of an application containing details of the insured's personal and family history. After investigation by the medical and inspection departments of the company, the policy as a rule becomes effective upon delivery to and actual payment of the premium by the applicant during his lifetime and good health. After becoming operative, it continues until it expires by limitation, by maturity at the end of a stated period, or by death.[22]

The relationship established by the contract is that of conditional debtor and creditor, and not that of trustee and cestui que trust. This was held by a New York court[23] with respect to a company issuing policies on the tontine or "ten years dividend system," and the United States Supreme Court[24] later decided that an ordinary life policy has less claims to trusteeship than a tontine.

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[18] For a detailed discussion of the various policies and their uses see Huebner, *opus cit.,* pt. I; Knight, C. K., *Advanced Life Insurance,* Wiley, N. Y. (1926), pp. 15-27.

[19] The English term is usually *assured,* but in this country little distinction in meaning is made between them. Although the plaintiff in the following cited case contended that *assured* meant the person for whose benefit the policy was taken, Mr. Justice Field held: "There are undoubtedly instances where the distinction between the terms *assured* and *insured* is observed, though we do not find any judicial consideration of it. The application of either term to the party for whose benefit the insurance is effected, or to the party whose life is insured, has generally depended upon its collocation and context in the policy." Conn. Mut. Life Ins. Co. *v.* Luchs (1883), 108 *U. S.* 498, 504.

[20] The beneficiary frequently receives benefits of which he may not be deprived. *Infra,* ch. XI.

[21] Fouse, L. G., "Policy Contracts in Life Insurance," Insurance, Annals, *opus cit.,* p. 30.

[22] *Ibid.,* p. 35.

[23] Uhlman *v.* The N. Y. Life Ins. Co. (1888), 109 *N. Y.* 421.

[24] Equitable Life Assur. Soc. of the U. S. *v.* Brown (1909), 213 *U. S.* 25, 46.

Not a Contract of Indemnity.

The impression created by the early decisions to the effect that a policy of life insurance is a contract of indemnity still persists,[25] although such decisions have been generally overruled. According to the weight of modern authority, a contract of life insurance is "not a contract of indemnity, as in the case of fire or marine insurance, but . . . a contract to pay a certain sum of money in the event of death." [26]

The principle was settled in Hamilton *v.* Mendes [27] that as to marine insurance, policies were for indemnity only. In the famous case of Godsall *v.* Boldero,[28] Lord Ellenborough decided that the same principle should apply to life policies.[29] The plaintiffs in the case were interested in the life of William Pitt, insuring it for £500. After Pitt's death his debts, including the debt to the plaintiffs, were paid out of money granted by parliament. The plaintiffs' insurable interest, existing at the time of the inception of the policy, ceased with the payment of the debt. The question before the court was whether, in view of the Gambling Act of 1774,[30] the underwriters were liable for the amount of insurance. The court was guided in its reasoning by Lord Mansfield's decision in Hamilton *v.* Mendes[31] and in delivering judgment stated:[32]

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[25] "An exhaustive examination of the cases would reveal the fact that courts, as well as legislatures, do not fully apprehend the distinction known to all life insurance lawyers between contracts of indemnity and contracts of life insurance." Blackburn, *opus cit.,* p. 20.

[26] Equitable Life Ins. Co. of Iowa *v.* Cummings et al (1925; C. C. A. 3), 4 *F.* (2d) 794, 796.

[27] (1761) 2 Burr. *(Eng.),* 1198, 1210. Lord Mansfield: "The plaintiff's demand is for an *indemnity.* His action, then, must be founded upon the *nature of his damnification,* as it really is, at the *time* the action is brought. It is repugnant, upon a contract of indemnity, to recover as for a *total* loss, when the final event has decided, that the damnification, in truth, is an *average,* or perhaps *no* loss at all.

"Whatever undoes the damnification, in whole or in part, must operate upon the indemnity in the *same degree.* It is a contradiction in terms, to bring an action for indemnity, when, upon the whole event, *no* damage has been sustained." By 1806 it was settled "beyond all question." Lucena *v.* Craufurd and Others (1806), 2 Bos. & P. N. R. *(Eng.),* 269, 309.

[28] (1807) 9 East *(Eng.)* 72.

[29] The principle of indemnity "has always been ignored as regards assurances on a man's own life." Syder, *opus cit.,* p. 292.

[30] 14 Geo. III, c. 48, § 3 (1774). After prescribing the necessity of insurable interest, the act provides that "in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, event or events."

> This assurance, as every other to which the law gives effect, . . . is in its nature a contract of *indemnity*, as distinguished from a contract by way of *gaming* or *wagering*.
>
> The event, against which the indemnity was sought by this assurance, was substantially the expected consequence of his death as affecting the interests of these individuals assured in the loss of their debt. This action is, in point of law founded upon a supposed damnification of the plaintiffs, occasioned by his death, existing and continuing to exist at the time of the action brought; and being so founded, it follows of course, that if, before the action was brought, the damage, which was at first supposed likely to result to the creditors from the death of Mr. *Pitt*, were wholly obviated and prevented by the payment of his debt to them, the foundation of any action on their part, on the ground of such insurance, fails.

The companies uniformly disregarded the decision in practice[33] and it was only a matter of time before it was overruled in a suit "which forms one of the landmarks in the legal history of life assurance."[34] The case of Dalby *v.* India[35] dealt with a reinsurance contract on the life of His Royal Highness, Adolphus Frederick, Duke of Cambridge, and involved the decision of Godsall *v.* Boldero. Baron Parke, the presiding judge, rendered judgment in part as follows:[36]

> The contract commonly called life-assurance, when properly considered, is a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life,—the amount of the annuity being calculated, in the first instance, according to the probable duration of the life: and, when once fixed, it is constant and invariable. The stipulated amount of annuity is to be uniformly paid on one side, and the sum to be paid in the event of death is always (except when bonuses have been given by prosperous offices) the same, on the other. This species of insurance in no way resembles a contract of indemnity."

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[31] (1761) 2 Burr. *(Eng.)* 1198.

[32] Godsall *v.* Boldero (1807), 9 East (*Eng.*) 72, 81.

[33] Dalby *v.* The India and London Life-Assurance Co. (1854), 15 C. B. *(Eng.)* 365, 392.

[34] Syder, *opus cit.*, p. 293. See also Walford, Cornelius, *The Insurance Cyclopaedia*, J. H. and C. M. Goodsell, N. Y. (1871), vol. 2, pp. 108, 109.

[35] (1854) 15 C. B. *(Eng.)* 365.

[36] *Ibid.*, p. 387.

The court emphasized that the policy would have been legal at common law before the passage of 14 Geo. III, c. 48, but the defendant contended that the Act required an insurable interest at the time the policy matured.[37] The question thus arose whether the right to recover was limited to the amount of the interest *at the time of effecting the policy* or *at the time of death.* To allow the former would alter the construction of the contract from one paying a fixed sum into one paying a varying sum, or even nothing, while the premium would remain unvarying. "This seems so contrary to practice and fair dealing and common honesty that this construction cannot, we think, be put upon this section. . . . The only effect of the statute, is, to make the assured value his interest at its true amount when he makes the contract." [38]

The courts in this country early adopted the view of the English courts as laid down in the above decision, although there is authority to the effect that a contract of life insurance is a contract of indemnity.[39] Thus, in New Jersey [40] it was held that "an insurance upon life has, in fact, but a remote resemblance to a marine or fire insurance. . . . A life insurance is a contract to pay a certain specified sum on the happening of a particular event, which may or may not occasion a pecuniary loss." The United States Supreme Court[41] distinguished between rules of construction governing life policies and those of fire and marine risks, and concluded that "the contract is not merely for an indemnity, as in marine and fire policies." Rhode Island[42] had adopted the same rule in 1869, followed by New York[43] and Pennsylvania[44] some years later.

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[37] *Supra,* note 30.

[38] The decision was upheld in Law *v.* The London Indisputable Life Policy Co. and Another (1855), 1 K. & J. (*Eng.*) 223. See also Wheelton *v.* Hardisty (1857), 8 El. & Bl. *(Eng.)* 232, 270, which recognizes a difference between life and marine insurance.

[39] Bevin *v.* The Conn. Mut. Life Ins. Co. (1854), 23 *Conn.* 244, 251. ". . . in this country we hold the English statutes to be in affirmance of the principle of the common law, that policies of insurance are contracts of indemnity only." The court applied this to include insurance on lives also. Kennedy *v.* N. Y. Life Ins. Co. (1855), 10 *La.* Ann. 809, 813. "From the necessity of the case a life policy is always against a total loss, but whether it is for the whole amount specified in the policy, or the whole amount of the interest of the assured, depends entirely upon the character of each particular contract. Where the interest of the party effecting a life insurance, or in whose favor it is made, is manifestly indefinite, as in case of dependance for support, the interest is valued at the amount insured. (Quoting 2d Phillips, sec. 1755, p. 441). No proof of the extent of the interest of the insured is necessary in such a case. . . . But I apprehend no such rule of recovery, even in contracts of life insurance, can be extended to cases where the interest is fixed and determinable, as in the case at bar, viz., that of a creditor in the life of his debtor for the security of the debt due him." See also St. John *v.* The American Mut. Life Ins. Co. (1855), 13 *N. Y.* 31. The idea also appears in Central Bank of Wash. *v.* Hume (1888), 128 *U. S.* 195, 205. By Mr. Chief Justice Fuller: "Marine and fire insurance is considered as strictly an indemnity; but while this is not so as to life insurance, which is simply a contract, so far as the company is concerned, to pay a certain sum of money upon the occurrence of an event which is sure at some time to happen, in consideration of the payment of the premiums as stipulated, nevertheless the contract is also a contract of indemnity. If the creditor insures the life of his debtor he is thereby indemnified against the loss of his

General Rules Underlying Its Construction

Contracts written in general terms when applied to specific cases frequently require interpretation. To guide them in their decisions courts have evolved certain general rules which are applicable to policies of insurance as well as to other contracts, although some courts are inclined to regard the insurance policy *sui generis*.[45] The policy of insurance evidences the terms of the agreement and "merges all prior or contemporaneous agreements touching the transaction."[46] In England the courts have been disposed to hold that the prospectus or pamphlet is a part of the contract, especially if evidence is introduced to show that the insured was induced thereby to enter into the

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debt by the death of the debtor before payment; yet, if the creditor keeps up the premiums, and his debt is paid before the debtor's death, he may still recover upon the contract, which was valid when made, and which the insurance company is bound to pay according to its terms; but if the debtor obtains the insurance on the insurable interest of the creditor, and pays the premiums himself, and the debt is extinguished before the insurance falls in, then the proceeds would go to the estate of the debtor."

[40] Trenton Mut. Life and Fire Ins. Co. *v.* Johnson (1854), 24 *N. J.* L. 576, 585.

[41] Insurance Co. *v.* Bailey (1871), 13 Wall. (*U. S.*) 616, 619.

[42] Mowry *v.* Home Life Ins. Co. (1869), 9 *R. I.* 346, 354.

[43] Grattan *v.* National Life Ins. Co. (1878), 15 Hun. *(N. Y.)* 74, 76.

[44] Scott *v.* Dickson, Adm. (1884), 108 *Pa.* 6, 14. See also Nye *v.* Grand Lodge, Ancient Ord. of United Workmen (1894), 9 *Ind.* App. 131 for a full discussion of the nature of a life policy, and the differences between life and fire and marine risks; Aetna Life Ins. Co. v. Kimball (1921), 119 *Me.* 571, 576; Equitable Life Ins. Co. of Iowa *v.* Cummings et al (1925; C. C. A. 3) 4 *F.* (2d) 794; Couch, *opus cit.*, vol. 1, § 34, p. 49; Holdsworth, W. S., "The Early History of the Contract of Insurance" (1917), 17 *Col. L. R.* 85, 110. See further the Chapter on Insurable Interest, *infra.*

[45] Pfeister *v.* Missouri State Life Ins. Co. (1911), 85 *Kan.* 97, 102; State ex rel. *v.* Ellison (1916), 269 *Mo.* 410, 420; Couch, *opus cit.*, vol 1, § 167, p. 332; Finch, *opus cit.*, p. 496; Vance, *opus cit.*, p. 7.

[46] Floars *v.* Aetna Life Ins. Co. (1907), 144 *N. C.* 232.

contract;[47] but in this country the general rule is to the contrary. The doctrine is well stated in a New York case by Selden, J.:[48]

> It [prospectus] was not referred to in, nor in any manner annexed to, the policy. Nothing is better settled than that, where two parties have entered into a written contract, all previous negotiations and propositions in relation to such contract, whether parol or written, are to be regarded as merged in the final agreement. Such preliminary matter may sometimes be admissible under the rule which admits evidence of the surrounding circumstances for the purpose of explaining an ambiguous expression; but never where the terms of the contract are clear and explicit . . . . Policies of insurance are no exception to this rule . . . .

The Insured Favored.

1. *In General.*

Policies of insurance are notoriously loosely drawn. This was recognized in the early cases;[49] and even modern policies are full of "crudities, inconsistencies, and ambiguities."[50] A rule enforced times without number is one to the effect that where a policy is susceptible to a double construction, it is construed strictly against the insurer and in favor of the insured, according to the rule *contra proferentem*.[51] The underlying theory is that such instruments are contracts of adhesion, *viz.,* their terms "do not result from mutual negotiation and concessions of the parties and so do not truly express an agreement at which they have arrived. Rather most of the terms are fixed in accordance with a form prescribed by the insurer, or even by statute, to which the insured may 'adhere' if he chooses, but which he cannot change."[52] The reasons for the rule have been well expressed in Koshland *v.* Columbia Insurance Company by Rugg, C. J.:[53]

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[47] Wood *v.* Dwarris (1856), 11 Exch. *(Eng.)* 493; Wheelton *v.* Hardisty (1857), 8 El. & Bl. *(Eng.)* 232; Couch, *opus cit.,* vol. 1, § 162, p. 317.

[48] Ruse *v.* The Mutual Benefit Life Ins. Co. (1861), 23 *N. Y.* 516, 519. To give memoranda effect, they must be referred to in terms, as forming part of the policy, or at least show that this was intended. See also Fowler *v.* Met. Life Ins. Co. (1889), 116 *N. Y.* 389, 397; Grange, Appellant, *v.* Penn Mut. Life Ins. Co. (1912), 235 *Pa.* 320; and the chapter on the Application, *infra.*

[49] Brough *v.* Whitmore (1791), 4 Term R. (*Eng.*) 206, 210. Buller, J.: "Without commenting on the words of the policy, it is sufficient to say that a policy of assurance has at all times been considered in courts of law as an absurd and incoherent instrument . . . ." Yeaton *v.* Fry (1809), 5 Cranch *(U. S.)* 335, 342. Marshall, Ch. J.: "Policies of insurance are generally the most informal instruments which are brought into courts of justice." See also *supra,* note 3; ch. 3, notes 84, 86, 88, 90.

[50] Vance, *opus cit.,* p. 200. Stinchcombe *v.* N. Y. Life Ins. Co. (1905), 46 *Or.* 316, 326.

[51] Dibble *v.* Reliance Life Ins. Co. (1915), 170 *Cal.* 199; Mass. Benefit Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918; Monahan *v.* Fidelity Mut. Life Ins. Co. (1909), 242 *Ill.* 488; Julius *v.* Met. Life Ins. Co. (1921), 299 *Ill.* 343; Masonic Acc. Ins. Co. *v.* Jackson (1929; *Ind.* Supreme Ct.) 164 N. E. 628; Goodwin *v.* Prov. Sav. Life Assur. Soc. (1896; *Iowa* Supreme Ct.), 66 N. W. 157; Drury's Adm'x. *v.* N. Y. Life Ins. Co.

> A policy of insurance is a contract in writing. It is to be construed and interpreted according to the fair and reasonable meaning of the words in which the agreement of the parties is expressed. When for any reason there is ambiguity in the terms employed in the policy, every doubt is to be resolved against the insurer and in favor of the insured. There are two reasons for this rule: (1) the purpose of such a contract is indemnity against the losses to which the insurance relates and every rational intendment is made by the law to effectuate the main design of the parties, [citations] and (2) as a matter of common knowledge the contract is drawn by the insurer in the light of wide experience and with the aid of highly skilled advisers and hence is to be construed most strongly against the person using the equivocal language [citations].

2. *In Standard Policies.*

Where the policy is in a form required by statutory enactment, the above rule is not universally enforced. Some courts hold that the insured is not entitled to any more consideration than the company;

(1903; *Ky.* Ct. of App.), 74 S. W. 663; Elliott *v.* Hamilton Mut. Ins. Co. (1859) 13 Gray *(Mass.)* 139; Carter *v.* John Hancock Mut. Life Ins. Co. (1879), 127 *Mass.* 153; Foot *v.* Aetna Life Ins. Co. (1875), 61 *N. Y.* 571; Francis *v.* Prudential Ins. Co., appellant (1914), 243 *Pa.* 380; Carter *v.* Met. Life Ins. Co., appellant (1919), 264 *Pa.* 505; Guaranty Life Ins. Co. *v.* Frumson (1921; *Mo.* Supreme Ct.), 236 S. W. 310; Yeaton *v.* Fry (1809, 5 Cranch *(U. S.)* 335; Moulor *v.* American Life Ins. Co. (1884), 111 *U. S.* 335; Mut. Ins. Co. *v.* Hurni Co. (1923), 263 *U. S.* 167; Couch, *opus cit.,* vol. 1, § 188, p. 392.

[52] Vance, *opus cit.,* p. 201. The same thought is found in Pfiester *v.* Missouri State Life Ins. Co. (1911), 85 *Kan.* 97, 101. Burch J.: "Few persons solicited to take policies understand the subject of insurance or the rules of law governing the negotiations, and they have no voice in dictating the terms of what is called the contract. They are clear upon two or three points which the agent promises to protect, and for everything else they must sign ready-made applications and accept ready-made policies carefully concocted to conserve the interests of the company." See also Melick *v.* Met. Life Ins. Co. (1913), 84 *N. J.* L. 437.

[53] (1921) 237 *Mass.* 467, 471.

"it cannot be presumed that the legislature intended the provision to be construed more favorably to the insured than to the insurer."[54] The same attitude is taken by the courts of Indiana,[55] for the following reason:

> The rule of strict construction as applied against insurance companies is usually grounded on the fact that the forms of policies are prepared by them and on the consequent presumption indulged to some extent that primarily they have their own interest in view in selecting the particular language used. It is apparent that in case of a stipulation inserted in a policy by command of a statute the reason back of the rule largely fails. . . . As the provision here was inserted pursuant to legislative enactment, it should not be presumed that back of it there was a purpose to give to either party an advantage over the other, but rather an intent to stipulate what was fair between them.

Probably the weight of opinion, especially as pertains to life insurance, is expressed in a late Pennsylvania decision by Mr. Justice Schaffer:[56]

> Although a standard form of policy is prescribed by statute, nevertheless upon its acceptance by the parties it becomes a voluntary contract between them which derives its force and efficacy from their consent. It constitutes their contract, and it must be construed by the same rules as similar contracts voluntarily entered into. And the fact that the legislature has prescribed a standard form of policy affords no reason for giving to a clause any different construction from that theretofore given by the courts to all similar contracts

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[54] Ramsey *v.* Old Colony Life Ins. Co. (1921), 297 *Ill.* 592.

[55] Ebner, Admr. *v.* Ohio State Life Ins. Co. (1918), 69 *Ind.* App. 32, 45. And in Del Guidici *v.* Importers, etc., Ins. Co. (1922), 98 *N. J.* L. 435, 437. "This makes pertinent the doctrine of Mick *v.* Corp. of Royal Ex., etc., 87 *N. J.* L. 607, in which it was decided that where a policy of fire insurance is written in a standard form approved by governmental authority, as in this one, the maxim *Verba Chartarum fortius accipiuntur contra proferentum* has no special application." See also Lloyd *v.* North Br. and Mer. Ins. Co. (1916), 161 *N. Y.* S. 271, 275; Rosenthal *v.* Ins. Co. of N. A. Appellant (1914), 158 *Wis.* 550.

[56] Gratz *v.* Ins. Co. of N. A., Appellant (1925), 282 *Pa.* 224, 230; quoting 1 *Joyce on Insurance* 2d ed., 546-7. So in Murphey *v.* Liver. and Lon. and Globe Ins. Co. (1923), 89 *Okla.* 207, 210: "The fact that a fire insurance policy is a standard form prescribed by statute does not alter its status as a contract, which must be construed by the rules of construction usually applied to insurance contracts," quoting 1 *Cooley, Ins.*, p. 630. See also Prahm *v.* Prudential Ins. Co. (1922), 97 *N. J.* L. 206; Diamond *v.* Met. Life Ins. Co. (1909), 116 *N. Y.* S. 617; Grant Lumber Co. *v.* North River. Ins. Co. (1918; Dist. Ct. D.) 253 *F.* 83; Couch, *opus cit.*, vol. 1, pp. 340, 414, 418.

made without legislative sanction. So where the terms employed in a standard policy have been in previous use in insurance contracts and have had a judicial construction, it will be assumed that said terms were used in the standard forms in the sense in which they were previously used and defined.

Forfeitures Not Favored.

The courts are loath to render nugatory a policy which contains conflicting provisions. The policy and spirit of the law are averse to forfeitures.[57] Lord Mansfield[58] declared that "the courts of justice are to construe the words of parties so as to effectuate their deeds, and not to destroy them; more especially where the words themselves abstractedly may admit of" more than one meaning. Where the intent of stipulations involving forfeitures is doubtful, the contract, if reasonably possible, will be sustained, "so as not to defeat . . . the indemnity which the insured sought and thought he had secured . . . ."[59]

Strict Construction.

It is an equally well-settled rule of law that "where the words are clear and free from uncertainty and the meaning plain, the contract as made by the parties is beyond the power of the courts to change by a forced construction."[60] Policies of insurance are interpreted reasonably to effect the plain intent of the parties.[61] A court can construe the provisions of a contract only when they are not clearly expressed.[62] When the wording is "plain, positive and definite there is no room for construction, and it must be given its natural and obvious meaning."[63] The reason for the rule has been set forth as follows:[64]

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[57] Stinchcombe *v.* N. Y. Life Ins. Co. (1905), 46 *Or.* 316, 322. ". . . inconsistent provisions rendering it doubtful or uncertain whether, or under what conditions, a forfeiture was really intended, will be so interpreted, whenever they can, within the bounds of reason and common fairness, as to elude the forfeiture and secure to the parties that to which they are in justice entitled."

[58] Pugh *v.* Duke of Leeds (1777), Cowp. *(Eng.)* 714, 725.

[59] Montgomery, Appellant, *v.* Southern Mut. Ins. Co. (1913), 242 *Pa.* 86, 90. See also Mass. Ben. Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.), 30 S. E. 918; Sun Life Ins. Co. *v.* Taylor (1900), 108 *Ky.* 408; Burleigh et al. *v.* Gebhard Fire Ins. Co. (1882), 90 *N. Y.* 220; Rosenthal *v.* Ins. Co. of N. A., Appellant (1914), 158 *Wis.* 550; Couch, *opus cit.,* vol. 1, § 186, p. 380.

[60] Blunt *v.* Fid. and Cas. Co. (1904), 145 *Cal.* 268, 271.

[61] Insurance Co. *v.* Boon (1877), 95 *U. S.* 117, 128.

[62] Johnson *v.* Grand Fraternity (1919; C. C. A. 8), 255 *F.* 929.

> Parties competent to contract may enter into such agreements with each other as they see fit, and it is the purpose of the law and function of the court to enforce their contract if not in violation of law or opposed to public policy. Courts do not make contracts for parties who are fully capable of making their own agreements, and if there is no ambiguity about a contract the courts cannot permit a construction contrary to its terms.

This is true "even though the result may seem to be hard upon one or both of them."[65] "Courts are not at liberty to read into a contract what it does not contain."[66] But the construction must not be "strained, arbitrary, irrational, unnatural, or forced, or strictly technical, or sophistical; rather, it must be fair, natural, reasonable, logical, and practical, having reference to the risk and subject-matter and the purposes of the entire contract."[67]

Endorsements or Riders.

Because of the general nature of the insurance contract and the fact that it is often desirable to make provision for specific circumstances, the terms of the policy are frequently modified by the addition of a written, stamped, or printed endorsement. As a general rule, such endorsements, if properly attached, are a part of the contract.[68] Their terms are collated with the meaning of the whole contract,[69] the complete instrument, if possible, being harmonized.[70]

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[63] Bone *v.* N. Y. Life Ins. Co. (1925), 165 *Minn.* 327, 329.

[64] Hancock *v.* Knights of Security (1922), 303 *Ill.* 66, 73.

[65] Koshland *v.* Columbia Ins. Co. (1921), 237 *Mass.* 467, 472.

[66] Carter *v.* Met. Life Ins. Co., Appellant (1919), 264 *Pa.* 505, 509.

[67] Couch, *opus cit.,* vol. 1, § 177, p. 360. See also Hormel and Co. *v.* American Bond Co. (1910), 112 *Minn.* 288; Melick *v.* Met. Life Ins. Co. (1913) 84 *N. J.* L. 437; Ogden *v.* Columbian Ins. Co. (1813), 10 Johns. *(N. Y.)* 273; Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136; Gans *v.* Aetna Life Ins. Co. (1915), 214 *N. Y.* 326; Hartigan *v.* Casualty Co. of America (1919), 227 *N. Y.* 175; Rosenthal *v.* Ins. Co. of N. A., Appellant (1914) 158 *Wis.* 550.

[68] Robertson and Another *v.* French (1803), 4 East *(Eng.)* 130; Couch, *opus cit.,* vol 1, § 159, p. 310.

[69] Gunther et al. *v.* Liv. and Lon. and Globe Ins. Co. (1888; C. C., E. D. N. Y.), 34 *F.* 501.

[70] Corp. of R. C. Church *v.* Royal Ins. Co. (1925), 158 *La.* 601.

When, however, the added conditions are inconsistent with those of the original contract, they supersede it, particularly when this is the evident intention of the parties.[71] In case of repugnancy between printed and written conditions, the "writing is presumed to express the specific intention of the parties and will prevail." [72] The rule and reason therefor were clearly stated by Lord Ellenborough in Robertson and Another *v.* French: [73]

> The only difference between policies of insurance, and other instruments in this respect, is, that the greater part of the printed language of them, being invariable and uniform, has acquired from use and practice a known and definite meaning, and that the words superadded in writing (subject indeed always to be governed in point of construction by the language and terms with which they are accompanied) are entitled nevertheless, if there should be any reasonable doubt upon the sense and meaning of the whole, to have a greater effect attributed to them than to the printed words, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning, and the printed words are a general formula adapted equally to their case and that of all other contracting parties upon similar occasions and subjects.

Usage and Custom.

As in the construction of other contracts, courts interpret insurance policies to give effect to the intention of the parties.[74] A policy of insurance must be construed according to its sense and meaning as collected from the terms used in it, the nature of the contract, the objects to be attained, usages and customs, and such other documents as are referred to and made a part of the contract, *i. e.,* applications, surveys, proposals, by-laws or regulations, and endorsements.[75] Words are understood in the sense that the parties intended, that is, in their usual, natural, broad every-day signification.[76] In a case[77] frequently cited, Lord Ellenborough ruled that a policy of insurance

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[71] Corp. of R. C. Church *v.* Royal Ins. Co. (1925), 158 *La.* 601; Haws *v.* Ins. Co. (1889), 130 *Pa.* 113; Stallani *v.* Belt Auto Ind. Ass'n (1925), *Pa.* Sup. 224.

[72] Thomas *v.* Taggart (1908), 209 *U. S.* 385.

[73] (1803) 4 East *(Eng.),* 130, 136.

[74] Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136, 158

[75] Whitmarsh and Another *v.* Conway Fire Ins. Co. (1860), 16 Gray *(Mass.)* 359; American Ins. Co. *v.* Stoy (1879), 41 *Mich.* 385; Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136; Ins. Co. *v.* Boon (1877), 95 *U. S.* 117; Robertson and Another *v.* French (1803), 4 East (*Eng.*) 130.

> should be construed according to its sense and meaning, as collected in the first place from the terms used in it, which terms are themselves to be understood in their plain, ordinary, and popular sense, unless they have generally in respect to the subject matter, as by the known usage of trade, or the like, acquired a peculiar sense distinct from the popular sense of the same words; or unless the context evidently points out that they must in the particular instance, and in order to effectuate the immediate intention of the parties to that contract, be understood in some other special and peculiar sense.

Even before insurance had attained any considerable prominence in the law courts, its practice was conformable to the general usage of trade.[78] With the gradual upbuilding of a body of law, this principle was established by the courts as one of the general rules of construction.[79] Well-established usages and customs are as much a part of the contract as if contained therein, unless illegal or prohibited by statute.[80] But "an express written contract, embodying in clear and positive terms the intention of the parties, cannot be varied by evidence of usage or custom." [81]

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[76] Aetna Life Ins. Co. *v.* Fitzgerald (1905), 161 *Ind.* 317; Farber *v.* Mut. Life. Ins. Co. of N. Y. (1924), 250 *Mass.* 250; Aurnhammer *v.* Brotherhood Acci. Co. (1925), 250 *Mass.* 563.

[77] Robertson and Another *v.* French (1803), 4 East *(Eng.)* 130, 135. See also Pugh *v.* Duke of Leeds (1777), Cowp. *(Eng.)* 714; Bean *v.* Stupart (1778), 1 Dougl. *(Eng.)* 11; Burleigh et al. *v.* Gebhard Fire Ins. Co. (1882) 90 *N. Y.* 220; Mowry *v.* Home Life Ins. *Co.* (1869) 9 *R. I.* 346; Ins. Co. *v.* Boon (1877), 95 *U. S.* 117.

[78] Marshall, Samuel, *A Treatise on the Law of Insurance,* 1st Am., from the Eng. Ed., Boston (1805), p. 21.

[79] Whitmarsh and Another *v.* Conway Fire Ins. Co. (1860), 16 Gray (*Mass.*) 359, 362. "If a custom or usage is referred to, the custom or usage is to be ascertained as in other cases by the proper evidence. If a term of art or trade is used in the contract, having a peculiar significance among persons conversant with the art or trade, the testimony of such persons becomes proper evidence to prove the meaning." See also Koshland *v.* Columbia Ins. Co. (1921), 237 *Mass.* 467; Ogden *v.* The Columbian Ins. Co. (1813), 10 Johns. (*N. Y.*) 273; Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136; Eyre *v.* Marine Ins. Co. (1842), 5 Watts & S. (*Pa.*) 116, 122. "All the cases that have arisen seem to have been pretty much decided one way, and to have adopted and enforced the principles laid down by Lord Mansfield in Pelly *v.* The Royal Exchange Assurance Company (1 Burr. 341), . . ."; Livingston and Gilchrist *v.* Maryland Ins. Co. (1813), 7 Cranch (*U. S.*) 506; Gracie *v.* Marine Ins. Co. (1814), 8 Cranch (*U. S.*) 75; Columbian Ins. Co. *v.* Catlett (1827), 12 Wheat. (*U. S.*) 383; Brough *v.* Whitmore (1791), 4 Term R. (*Eng.*) 206; Robertson and Another *v.* French (1803), 4 East (*Eng.*) 130.

[80] Couch, *opus cit.,* vol. 1, p. 325, § 165.

Governing Law: Lex Loci.

Although there are exceptions,[82] the generally accepted rule is that policies are governed by the law and usages of the place where the contract is made.[83] This is held to be in the state where the last and essential acts took place; [84] "where the last act necessary to complete it was done." [85] Assignments, however, are usually regarded as separate and distinct contracts, and they are governed by the law of the place of the execution of the assignment, regardless of the place where the original contract was made.[86]

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[81] Grace *v.* Am. Cent. Ins. Co. (1883), 109 *U.S.* 278, 283. "This rule is based upon the theory that the parties, if aware of any usage or custom relating to the subject-matter of their negotiations, have so expressed their intention as to take the contract out of the operation of any rules established by mere usage or custom." See also Thompson *v.* Fid. Mut. Life Ins. Co. (1906), 116 *Tenn.* 557; Tyrie *v.* Fletcher (1777), Cowp. (*Eng.*) 666. The nature of a custom has been set forth in a case involving a farm lease, *i. e.,* Harris *v.* Carson (1836), 7 Leigh (*Va.*) 632, 638. "For a custom, to be valid, must be as old as the common law; it must be immemorial. And if the particular custom be proved to be immemorial it necessarily excludes the general custom, or common law; for two opposite and inconsistent customs cannot have immemorially existed, in the same place, and as to the same thing." The court, speaking now of the United States, continues: "Any practice or usage, however general, introduced into this country since its settlement, and in opposition to the common law, can have no force on the ground of custom; because it lacks the essential ingredient of a good custom —it is not immemorial."

[82] Some decisions hold that the governing law is that of the place where the contract is to be performed, or where it is "countersigned, or delivered, or accepted, or even the domicil of the insurer." Couch, *opus cit.,* vol. 1, p. 431, § 193.

[83] Mutual Life Ins. Co. of N. Y. *v.* Cohen (1900), 179 *U. S.* 262.

[84] Lukens *v.* Insurance Co. (1917), 269 *Mo.* 574.

[85] Northampton Mut. Live Stock Ins. Co. *v.* Tuttle (1878), 40 *N. J.* L. 476, 479. See also Heebner *v.* Eagle Ins. Co. (1857), 10 Gray (*Mass.*) 131; Cravens *v.* N. Y. Life Ins. Co. (1899), 148 *Mo.* 583; Equitable Life Society *v.* Clements (1891), 140 *U.S.* 226; Bruce, Helm, "By the Law of What State Are Questions Arising Out of Life Insurance Policies to be Determined?" *P.A.L.I.C.* (1913-21), Paper No. 45.

[86] Russel *v.* Grigsby (1909; C. C. A. 6) 168 *F.* 577, 580, reversed on other grounds in Grigsby *v.* Russel (1911), 222 *U.S.* 149. See also Mutual Life Ins. Co. *v.* Allen (1884), 138 *Mass.* 24; Couch, *opus cit.,* vol. 1, p. 453, § 209.

CHAPTER V

INSURABLE INTEREST AND ASSIGNMENT

Necessity of Insurable Interest.

It is practically an universal rule that a policy of insurance in order to be enforceable at law must be supported by an insurable interest. Although this is the rule today, in the early period of the institution, contracts partook more of the nature of wagers than of insurance. As a matter of fact, because of the state of society and the prevalence of epidemics, life insurance in the late medieval period could scarcely have been written on any other basis,[1] and much evidence to this effect has been preserved.[2] The nature of life insurance is well described in a passage from one of the earlier French authorities: [3]

> At Naples, at Florence, in England, and in various other places, it is permitted to make insurance upon the lives of people. But these kinds of insurance are not properly termed so; they are really wagers: . . . These wagers, improperly termed insurances, are prohibited in Holland, and in

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[1] Knight, C. K., *The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 10.

[2] *Supra,* ch. I, note 33 *et. seq.*

[3] Emerigon, B. M., *A Treatise on Insurances,* first pub. in 1783, trans. from the French by Samuel Meredith, London and Boston (1850), p. 157.

"Roccus has taken some pains to prove that insurances upon lives are legal contracts, yet in most of the states of Europe such insurances have been prohibited by positive law. In this country [England], however, such contracts have been repeatedly sanctioned by legislative authority, and indeed the legality of them is now indisputable. Perhaps it is in this country alone, that insurances upon lives can be safely tolerated. In France, they have always been deemed illegal [Le Guidon, ch. 16, art. 5], and they are expressly prohibited by the Ordinance of 1681, because, say the French writers, it is an offense against public decency to set a price upon the life of man, particuarly the life of a freeman, which is above all valuation." Marshall, Samuel, *A Treatise on the Law of Insurance,* 1st Am. from the Eng. Ed., Boston (1805), pp. 665, 666. Another writer points out that "People ought by all means to be prevented from getting Insurances done with sinister Views, especially that inhuman one of committing Murder to gain the Sum insured; an Instance of which Villainy happened a few Years since in a *London* Apothecary, who having got his Wife's Life insured, soon after killed her . . ." Magens, Nicolas, *An Essay on Insurances,* London (1775), 2 vols., vol. 1, p. 33. See also Lord *v.* Dall (1815), 12 *Mass.* 115, 117.

> several other countries. From an early period they had been prohibited in France. This prohibition was renewed by the Ordonnance. (Art. 10, h. t.) Man cannot be estimated at a price, says the law: . . . The life of man is not an object of commerce, and it is odious that his death should form matter of mercantile speculation: . . . And, as Grivel remarks, these kinds of wagers are of sad augury, and may occasion crimes: . . . These insurances are then absolutely void; the premium they stipulate is not legally payable; if paid, it may be redemanded at law . . .

Wager policies were void at common law in England, but subsequent to the Revolution of 1688 a course of decisions grew up sustaining them.[4] Parliament finally prohibited them, first with respect to marine risks,[5] and then with respect to lives.[6] Many of the works treating of this period emphasize the widespread practice of gambling, especially as reflected in the operation of numerous lotteries.[7] Offices were opened "for making insurances on marriages, births, christenings, service, etc.," and the practices were so fraudulent and the effects on the public so injurious that such offices were suppressed by statute.[8] Lotteries, which were the "most mischievous species of these fraudulent insurances" seem, despite many attempts at regulation, to have persisted many years, until finally their use was "considerably diminished" [9] by the Act of 1787.[10]

That wagering contracts, unless contrary to public policy, were still indulged in and enforced by the courts, in the absence of specific prohibition by Parliament, is revealed in a decision by Lord Mansfield of a case which "made a great noise all over Europe." [11] As stated by the court, this "was an action of assumpsit, upon a wager between the plaintiff and the defendant, upon the sex of Monsieur Le Chevalier D'Eon; and was so described in the declaration, which stated, that the defendant on the 4th of October, 1771, in consideration that the plaintiff would then and there pay him seventy-five guineas, undertook to pay to the plaintiff three hundred pounds, in case the Chevalier should at any time prove to be a female." The decision was in part as follows:[12]

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[4] Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457, 460.

[5] 19 Geo. II (1746), ch. 37.

[6] 14 Geo. III (1774) ch. 48. See Dalby *v.* India (1854), 15 C. B. (*Eng.*) 365.

[7] Anderson, Adam, *An Historical and Chronological Deduction of the Origin of Commerce,* Rev. ed., London (1787), 4 vols., vol. 3, p. 46; vol. 4, p. 176. See also Knight, Charles, *Popular History of England,* Sangster and Co., London, vol. 5, p. 41. See *supra,* ch. 1, note 91.

[8] Marshall, *opus cit.,* p. 21. The acts were those of 9 Anne (1710), ch. 6, § 57, inflicting a penalty of £500; and 10 Anne (1711), ch. 26.

[9] *Ibid.*

[10] 27 Geo. III (1787), ch. 1. "An Act to render more effectual the Laws now in being for suppressing unlawful Lotteries."

[11] Da Costa *v.* Jones (1778), Cowp. (*Eng.*) 729.

> Indifferent wagers upon indifferent matters, without interest to either of the parties, are certainly allowed by the law of this country, in so far as they have not been restrained by particular acts of parliament: And the restraints imposed in particular cases, support the general rule. For where parliament interposes and says, "unless you have an interest in such a case, any wager or insurance upon it shall be void and of no effect;" it implies, that in cases not specifically prohibited by act of parliament, parties may wager or insure at pleasure.

But even though some wagers are enforceable, there are others to which the court should not lend its aid. With respect to the particular wager involved in the case before the court, Lord Mansfield asked and answered the question set forth below:

> Shall two indifferent people, by a wager between themselves, injure him [the Chevalier] so, as to try in an action upon that wager, whether (as was said in the argument) he is a cheat and imposter; or, shew that he is a woman, and be allowed to subpoena all his intimate friends, and confidential attendants, to give evidence that will expose him all over Europe? It is monstrous to state. It is a disgrace to judicature.

Some years later in a suit to enforce a wager on the life of Napoleon Bonaparte such a contract was held void as tending "to produce a public mischief or inconvenience." In delivering the judgment of the court, Lord Ellenborough, Ch. J., stated:[13] "Where the subject-matter of the wager has a tendency injurious to the interests of mankind, I have no doubt in saying that it ought not to be sustained. . . . I consider it as a wager against public policy and of immoral tendency . . . ."

The effect of such wagering contracts upon the innocent third party is well brought out in an excerpt from an old publication:[14]

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[12] *Ibid.*, pp. 734-736.

[13] Gilbert *v.* Sykes (1812), 16 East (*Eng.*) 150, 160.

[14] Scott, David, *Every Man his own Broker* (1761), quoted in Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J.I.A.* (1886-87), vol. 26, pp. 2, 3.

> A practice likewise prevailed of insuring the lives of well-known personages, as soon as a paragraph appeared in the newspapers announcing them to be dangerously ill. The insurance rose in proportion as intelligence could be procured from the servants, or from any of the faculty attending, that the patient was in great danger. This inhuman sport affected the minds of men depressed by long sickness; for when such persons, casting an eye over a newspaper for amusement, saw their lives had been insured in the Alley at 90 per-cent, they dispaired of all hopes, and thus their dissolution was hastened. But to the honour of the principal merchants and underwriters, they caused an advertisement to be fixed up at Lloyd's Coffee-house declaring that they would not transact business with any Brokers who should be engaged in such infamous transactions.

In more recent times insurance on the lives of children and old people became common; so much so that the Massachusetts Department likened it to betting, and expressed its strong disapproval.[15] By 1880 the practice of speculation in aged human lives had become so widespread that over two hundred assessment associations were organized for that purpose within the next four years.[16] Such insurance was then prohibited by law,[17] and this experience "has resulted in the refusal by most companies to insure persons over the age of sixty unless the policy be of the investment type, and the further refusal to issue a policy if any person other than the insured seeks to effect the insurance or pay the premiums." [18] Many states today have laws limiting the amount of insurance which may be placed upon the lives of children.[19]

The necessity of the existence of insurable interest in life policies was definitely prescribed by parliament in the Act of 1774,[20] and its meaning interpreted in the cases of Godsall *v.* Boldero [21] and Dalby *v.* India.[22] The same rule was introduced in the United States, either by force of statute or common law,[23] so that now a life contract with no insurable interest is void in every state with the possible exception of New Jersey.[24]

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[15] "We should shrink with horror from applying life insurance to infants, though the hopes that cluster around them may easily be conceived to have a money value. Why, then, do we insure second childhood in which hope will have given place to history." Mass. Ins. Rep. (1865), vol. 10, quoted in *Mass. Ins. Rep.* (1876), vol. 21, pt. 2, p. 241.

[16] Fouse, L. G., "The Policy," *The Business of Insurance,* H. P. Dunham, Ed., Ronald, N. Y. (1912), 3 vols., vol. 1, p. 302.

[17] Pa. L. (1883), No. 77, § 2. Valid policies must be supported by an insurable interest, "and shall be invalid when the beneficiary or assignee thereof is solely and only interested in the death of the insured."

[18] Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. Pol. and Soc. Sci., Phila. (1905), p. 42.

[19] See, for example, Colo. Comp. L. (1921), § 2512; N. Y. L. (1930), ch. 601; Throckmorton's Ohio Code (1930), § 9462-1.

[20] 14 Geo. III (1774), ch. 48. The first section of this Act declares that "no insurance shall be made by any person or persons, bodies politic or cor-

Definition of Insurable Interest.

A policy of insurance is sometimes spoken of as an aleatory contract, that is, one involving risk or speculation. While it is true that the premium is risked against the chance of loss, it is not ordinarily a wagering or gambling transaction. "Although risk is the essence of the contract, it exists before the contract is executed, and the assured is moved to effect the contract by reason of the existence of the risk; while in a purely wagering contract the risk is created by the contract itself." [25] It is the presence of insurable interest which transforms the policy from an instrument of wager into one of insurance.

Various courts have defined insurable interest or pointed out its characteristics,[26] but the most comprehensive definition, and one

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porate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the said person or persons for whose use, benefit, or on whose account such policies shall be made, shall have no interest or by way of gaming or wagering, and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever."

[21] (1807), 9 East (*Eng.*) 72.

[22] (1854), 15 C. B. (*Eng.*) 365. See also *supra,* ch. IV, p. 67.

[23] Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457. Court decisions have been of greater effect in moulding the law of insurable interest. English, J. L., "The Life Policy Contract," *Rep. Ins. Insti. of Hartford, Inc.* (1914), vol. 7, p. 49.

[24] Vance, W. R., *Handbook of the Law of Insurance,* West Pub. Co., St. Paul, 2d Ed. (1930), pp. 81, 149. See the recent case of Howard *v.* Commonwealth Ben. Asso. (1922), 98 *N. J.* L. 267.

[25] Nye *v.* Grand Lodge, Ancient Or. of United Workmen (1894), 9 *Ind.* App. 131, 141. This case contains a full discussion of the nature of a life policy, the difference between life and fire and marine policies, and the nature and development of insurable interest. See also Hall, C. C., "What Constitutes an Insurable Interest in Lives," *T. A. S. A.* (1897-98), vol. 5, pp. 9, 152.

[26] Grattan *v.* National Life Ins. Co. (1878), 15 Hun (*N. Y.*) 74; Life Ins. Clearing Co. *v.* O'Neill (1901; C. C. A. 3) 106 *F.* 800, 801. By J. B. McPherson, Dist. Judge: "No person has an insurable interest in the life of another

which is frequently quoted, is that given by Mr. Justice Field, as follows:[27]

> It is not easy to define with precision what will in all cases constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relations of the party obtaining the insurance, either as creditor of or surety for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life. It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation; for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful—as operating more efficaciously—to protect the life of the insured than any other consideration. But in all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned, as being against public policy.

Life insurance policies in the absence of insurable interest are not enforceable at law for two reasons: First, they are wagers and void as against public policy or as violative of statutes prohibiting gaming;

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unless he would in reasonable probability suffer a pecuniary loss, or fail to make a pecuniary gain, by the other's death; or (in some jurisdictions) unless, in the discharge of some undertaking, he has spent money, or is about to spend money, for the other's support or advantage." Lucena *v.* Craufurd (1806), 2 Bos. & P. N. R. (*Eng.*) 269, 321. Lord Eldon: ". . . nor am I able to point out what is an interest, unless it be a right in the property, or a right derivable out of some contract about the property, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party." Couch, G. J., *Cyclopedia of Insurance Law,* Lawyers Co-operative Pub. Co., Rochester (1929), vol. 1, p. 763, § 294. "And, generally speaking, it may be said than an insurable interest is manifested where the person claiming it has a direct pecuniary claim on the life as a dependent, a creditor, a partner, a surety, or the holder of a contract right or obligation, or where, from the blood or affinity relationship between them, there is a definite and reasonable expectation that benefit will result to one from the continuance of the life of the other."

[27] Warnock *v.* Davis (1881), 104 *U. S.* 775, 779.

and, second, they are an incentive to crime in that they encourage the taking of human life.[28] Courts have therefore "uniformly held that one having no insurable interest in the life of another cannot procure a policy of insurance on such life, and the policy so procured is void at its inception." [29] The New York courts early held that wagers ought not to be encouraged,[30] and in Massachusetts, when the question arose for the first time, the opinion was expressed that "as wager policies are injurious to the morals of the citizens, tend to encourage an extravagant and peculiarly hazardous species of gaming, and to expose their property, which ought to be reserved for the benefit of real commerce, they ought not to receive the countenance of" the court.[31]

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[28] Patterson, E. W., "Insurable Interest in Life" (1918), 18 *Col. L. R.* 381, 385. But not all courts have approved of the latter. Chisholm *v.* Nat. Capitol Life Ins. Co. (1873), 52 *Mo.* 213 (but see Singleton *v.* St. Louis Mutual Ins. Co. (1877), 66 *Mo.* 63, 73); Mowry *v.* Home Life Ins. Co. (1869), 9 *R. I.* 346, 354: "The reasons generally given for requiring an interest as matter of public policy, do not seem very forcible, and in Johnson *v.* Trenton Mutual Life Insurance Company, 4 Zabriskie, 576, the court held policies good without interest, and observe that a policy on another life is just as dangerous and tempting to crime where there is an interest, as where there is not." And in Cronin *v.* Vermont Life Ins. Co. (1898), 20 *R. I.* 570, 572: ". . . the temptation to shorten life in order to hasten the possession of a remainderman, after a life estate in real property, is as strong as in the case of a beneficiary under a life policy. But these things have never been considered to be contrary to public policy." The court, however, in both these cases insisted upon some insurable interest being present. See further Lamont *v.* Grand Lodge (1887), 31 *F.* 177, and Gordon *v.* Ware Nat. Bank (1904; C. C. A. 8), 132 *F.* 444.

[29] Hawley *v.* Aetna Life Ins. Co. (1920), 291 *Ill.* 28, 30. See also Nye *v.* Grand Lodge (1894), 9 *Ind.* App. 131; Bromley's Admr. *v.* Washington Life Ins. Co. (1906), 122 *Ky.* 402; Rittler *v.* Smith, Adm'x. (1889), 70 *Md.* 261; Ruse *v.* Mutual Ben. Life Ins. Co. (1861), 23 *N. Y.* 516; U. B. Mut. Aid Soc. *v.* McDonald (1888), 122 *Pa.* 324; Wurzburg *v.* N. Y. Life Ins. Co. (1918), 140 *Tenn.* 59; Insurance Co. *v.* Chase (1866), 5 Wall. (*U. S.*) 509; Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457; Warnock *v.* Davis (1881), 104 *U. S.* 775; Crotty *v.* Union Mut. Life Ins. Co. (1892), 144 *U. S.* 621; Halford *v.* Kymer (1830), 10 Barn. & C. (*Eng.*) 724; Hebdon *v.* West (1863), 3 Best & S. (*Eng.*) 579.

[30] Clendining *v.* Church (1805), 3 Caines (*N. Y.*) 141, 145.

[31] Amory *v.* Gilman (1806), 2 *Mass.* 1, 12. In the first *life* insurance case to be tried in this country the question of insurable interest was one of the issues raised. The underwriters sought to escape liability because of a lack of insurable interest, but Parker, C. J., commented: "Nor can it be easily discerned, why the underwriters should make this a question after a loss has taken place, when it does not appear that any doubts existed when the contract was made; although the same subject was then in their contemplation." Lord *v.* Dall (1815), 12 *Mass.* 115, 119.

What Constitutes Insurable Interest.

1. *In Own Life.*

Every one has an unlimited insurable interest in his own life. It is a generally accepted rule that where a person takes a policy of insurance on his own life, paying the premiums therefor, he may name anyone as beneficiary to receive the proceeds, and such beneficiary may enforce the contract without showing an insurable interest in the life of the insured.[32] Mr. Justice Paxson has thus stated the reason for such a doctrine:[33]

> Policies of this nature are in no sense wagering. It would be denying a man's right to do what he will with his own to say that he could not in any form insure his life for the benefit of an indigent relative, or a friend to whom he felt under obligations. And the fact that he continues to pay the premium himself, and retains the control of the policy up to the time of his death, leaves no room for speculation or the improper practices which a few years ago brought such a scandal upon the life insurance business in this state.[34]

But the transaction must be *bona fide,* without collusion, and without intent to violate the laws prohibiting wagers.[35]

2. *In Life of Another.*

(a) Relationship.

Where, however, a person effects a policy upon the life of another, insurable interest must be present.[36] It may rest upon a pecuniary basis; or upon consanguinity or affinity where the relationship warrants the conclusion that the beneficiary has an interest, whether pecuniary or arising from dependence or natural affection, in the continuance of the life insured.[37] In England, the courts have been less inclined than in this country to construe mere relationship or affinity as sufficient to meet the requirement of insurable interest. In one relation only—that of husband and wife—is the actual existence of a pecuniary interest unimportant, and here it is presumed to exist.[38] In the absence of a pecuniary interest, a father has no insurable interest in the life of his son.[39] In the United States there is a diversity of opinion as to the need of a pecuniary interest where the relationship is close. Some courts have held that mere relationship, within certain degrees, is sufficient,[40] but the relationship does not extend further than husband and wife, parent and child, and brother and sister.[41] Probably a majority of the states still hold that mere relationship, with the exception of husband and wife, is insufficient to constitute an insurable interest.[42] But an interest is inferred "where the relation between the parties is such as to show a mutual interest and to rebut the presumption of a mere wager." [43]

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[32] Hawley *v.* Aetna Life Ins. Co. (1920), 291 *Ill.* 28; Sage *v.* Finney (1911), 156 *Mo.* App. 30; Welch *v.* Travelers' Ins. Co. (1919), 178 *N.Y.* S. 748; Northwestern Mut. Life Ins. Co. *v.* Coshocton Glass Co. (1910), 31 *Ohio* C. C. 665; Haberfeld *v.* Mayer (1917), 256 *Pa.* 151; Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457; Equitable Life Ins. Co. of Iowa *v.* Cummings et al (1925; C. C. A. 3), 4 *F.* (2d) 794.

[33] Scott *v.* Dickson, Adm'r. (1884), 108 *Pa.* 6, 16.

[34] *Supra,* insurance on lives of old people.

[35] Brogi *v.* Brogi (1912), 211 *Mass.* 512; Lamont *v.* Grand Lodge (1887), 31 *F.* 177; Couch, *opus cit.,* vol. 1, pp. 780-781.

[36] *Supra,* note 29.

(b) Creditor and Debtor.

Insurable interest exists where there is present the relationship of creditor and debtor, but the courts are not uniform in establishing a rule concerning the validity of a policy where the amount of the latter exceeds the debt. Where there is a substantial interest, however, mere overvaluation "is not conclusive evidence of fraud, or that the policy is a wager contract.[44] In an English case it was held that the insured can collect only the amount of his insurable interest at the time of the contract's inception.[45] In the United States, where a creditor insures his debtor's life for an amount greatly in excess of the loss which he is likely to sustain, the presumption is that the policy is a wager, and void. The United States Supreme Court [46] has decided that the relationship must be reasonable; that

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[37] Grattan *v.* National Life Ins. Co. (1878), 15 Hun (*N.Y.*) 74; Couch, *opus cit.,* vol. 1, p. 763.

[38] Reed *v.* Royal Exchange Assur. Co. (1795), Peake, N. P. Add. Cas. 70, 170 *Eng.* Reprint 198.

[39] Halford *v.* Kymer (1830), 10 Barn. & C. (*Eng.*) 724; Hebdon *v.* West (1863), 3 Best & S. (*Eng.*) 579; see also Life Ins. Clearing Co. *v.* O'Neill (1901; C. C. A. 3), 106 *F.* 800; 805.

[40] Trenton Mut. Life & Fire Ins. Co. *v.* Johnson (1854), 24 *N. J.* L. 576 (husband and wife, parent and child, brother and sister); Grattan *v.* National Life Ins. Co. (1878), 15 Hun (*N. Y.*) 74 (parent and child); Reserve Mut. Ins. Co. *v.* Kane (1876), 81 *Pa.* 154 (parent and child); Aetna Life Ins. Co. *v.* France (1876), 94 *U. S.* 561 (brother and sister); Life Ins. Clearing Co. *v.* O'Neill (1901; C. C. A. 3) 106 *F.* 800 (husband and wife).

[41] The following relationships do not create insurable interest; Home Mut. Benefit Ass'n *v.* Keller (1921), 148 *Ark.* 361 (son-in-law and father-in-law); Singleton *v.* St. Louis Mut. Ins. Co. (1877), 66 *Mo.* 63 (uncle and nephew); U. B. Mut. Aid Soc. *v.* McDonald (1888), 122 *Pa.* 324 (step-son); Brady *v.* Prudential Life Ins. Co. (1890; Ct. Com. Pleas), 5 Kulp (*Pa.*) 505 (cousin).

[42] Life Ins. Clearing Co. *v.* O'Neill (1901; C. C. A. 3), 106 *F.* 800; Vance, *opus cit.,* p. 157.

[43] Cronin *v.* Vermont Life Ins. Co. (1898), 20 *R. I.* 570, 572 (aunt and niece); Chisholm *v.* Nat. Capitol Life Ins. Co. (1873), 52 *Mo.* 213 (fiancée); Wurzburg *v.* N. Y. Life Ins. Co. (1918), 140 *Tenn.* 59 (a corporation in the life of an officer).

> To procure a policy for $3000 to cover a debt of $70 is of itself a mere wager. The disproportion between the real interest of the creditor and the amount to be received by him deprives it of all pretence to be a *bonâ fide* effort to secure the debt, and the strength of this proposition is not diminished by the fact that Cammack was only to get $2000 out of the $3000; nor is it weakened by the fact that the policy was taken out in the name of Lewis and assigned by him to Cammack.

In commenting on the above case and the fact that no general rule had as yet been laid down, another court [47] remarked that "it is probably better to leave each case to depend on its own circumstances." Pennsylvania has adopted a rule to ascertain whether an insurance is disproportioned to the debt, to the effect that the policy is limited "to the amount of the debt with interest and the amount of premiums with interest thereon, during the expectancy of the life insured according to the Carlisle tables." [48]

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[44] Sturm *v.* Atlantic Mut. Ins. Co. (1875), 63 *N. Y.* 77.

[45] Hebdon *v.* West (1863), 3 Best & S. (*Eng.*) 579. The fact that the insurer gets money for nothing makes no difference.

[46] Cammack *v.* Lewis (1872), 15 Wall. (*U. S.*), 643, 647.

[47] Rittler *v.* Smith, Adm'x (1889), 70 *Md.* 261.

[48] This rule was first suggested by Justice Paxon, in Grant *v.* Kline, 115 *Pa.* 618. While it was cited with approval by the court in Cooper *v.* Shaeffer (1887), 7 Sadler (*Pa.*) 405, 409, it was not adopted at the time because a $3000 policy for a $100 debt was regarded by the court as a "palpable wager." It was adopted by the court in Ulrich *v.* Reinoehl (1891), 143 *Pa.* 238, 249, in which Mr. Chief Justice Paxon pointed out: "Whether the question of excess of insurance is to be disposed of by the court as a matter of law, or by the jury as a question of fact, it is essential that we should have a fixed rule." It was upheld in Wheeland *v.* Atwood (1899) 192 *Pa.* 237. The following criticism has been made: "But the practical embarrassment in applying this plausible test is twofold; first, the validity of the contract should be determined according to the motives of the parties and the prospect as viewed at its date rather than after the death of the insured; and, second, the total amount of premiums as thus viewed with interest thereon will always exceed the whole face of the policy no matter how large or

In Texas the courts place no limit on the amount of insurance which may be taken out, but the creditor is limited as to the sum which he may collect. As stated by the court,[49] "the interest of the holder of such policy will be limited to the amount of such liability at the death of the insured, together with such amount as he has paid to preserve the policy, with interest thereon, and the remainder will be given to the estate of the party insured."

Consent of Insured Necessary.

Even where insurable interest exists, a policy obtained without the knowledge and consent of the one insured is contrary to public policy, and void on the ground that "it might be a fruitful source of crime." [50] So a policy obtained by a wife upon her husband's life was held void.[51]

Incontestability.

While there is some authority to the effect that the incontestable clause excludes a lack of insurable interest as a defense,[52] the generally accepted rule is otherwise. "The rule of law which condemns such contracts is not in the interest of the insurer, but has its foundation in good morals and sound public policy." [53] As stated by the

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how small the amount of insurance, leaving the creditor nothing at all to apply upon the debt." Richards, George, *A Treatise on the Law of Insurance,* Banks Law Pub. Co., N. Y. 3d Ed. (1921), pp. 46, 47. See also Exchange Bank *v.* Loh, Adm'r (1898), 104 *Ga.* 446.

[49] Cheeves *v.* Anders, Adm'r (1894), 87 *Tex.* 287, 292. "The rights of a beneficiary in a policy, taken out by the insured in good faith and with the premiums paid by the insured, appear not to have been determined." Vance, *opus cit.,* p. 153.

[50] Metropolitan Life Ins. Co. *v.* Monohan (1897), 102 *Ky.* 13, 15.

[51] Metropolitan Life Ins. Co. *v.* Smith (1900; *Ky.* Ct. App.), 59 S. W. 24, citing the above case. See also N. Y. Ins. Law, § 55, as amended by L. 1929, ch. 292, § 3, which provides, with certain exceptions, that insurance without consent is void.

[52] Wright *v.* Mut. Benefit Life Ass'n (1890), 118 *N. Y.* 237, affirming Wright *v.* Mut. Benefit Life Ass'n (1887), 43 Hun (*N. Y.*) 61. This decision was cited with approval in Mass. Benefit Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.), 30 S. E. 918, and in Murray *v.* State Mut. Life Ins. Co. (1901), 22 *R. I.* 524. See also Couch, *opus cit.,* vol. 1, p. 790, § 298, and Joyce, J. A., *A Treatise on the Law of Insurance of Every Kind,* Lawyers Cooperative Pub. Co., Rochester, 2d Ed. (1918), 5 vols., vol. 2, p. 1951.

[53] Brady *v.* Prudential Life Ins. Co. (1890; Ct. Com. Pleas), 5 Kulp (*Pa.*) 505, 506.

court in the case of Bromley's Adm'r. *v.* Washington Life Insurance Company:[54]

> . . . the incontestable clause is no less a part of the contract than any other provision of it. If the contract is against public policy the court will not lend its aid to its enforcement. . . . The parties to an illegal contract cannot by stipulating that it shall be incontestable, tie the hands of the court and compel it to enforce contracts which are illegal and void.

Cessation of Insurable Interest.

1. *In General.*

With respect to the time at which insurable interest must be present, a distinction must be drawn between policies of life and those of fire and marine insurance,[55] the former being regarded as not of indemnity.[56] An insurable interest in property need exist only at the time of loss. It may exist at the time the policy is taken out, or afterward, or in the absence of policy provisions, it may be suspended.[57] In life insurance, however, in the majority of jurisdictions the fact that an interest existed at the time of the beginning of the contract is sufficient, and it is held immaterial whether such interest terminates prior to the death of the insured.[58] While certain courts have departed from this rule, they are decidedly in the minority.[59] If the contract was valid "at the time it was entered into, notwithstanding the fact that the interest of the creditor has ceased during the life of his debtor, he may still recover on the policy, though the result may be that he will be twice paid for his debt, once by his debtor and again by recovery on the policy."[60] And the same rule has been applied where an officer severs his connection with a corporation after his life has been insured for business reasons.[61]

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[54] (1906), 122 *Ky.* 402, 406, 407. See also Clement *v.* Ins. Co. (1898), 101 *Tenn.* 22; and Anctil *v.* Manufacturers' Life Ins. Co. [1899], A. C. (*Eng.*) 604 P. C., on appeal from the Supreme Ct. of Canada, in which Lord Watson stated, p. 609: "The rule of the code [requiring insurable interest] appears to them to be one which rests upon general principles of public policy or expediency, and which cannot be defeated by the private convention of the parties."

[55] Bassett *v.* Farmers and Merchants Ins. Co. (1909), 85 *Neb.* 85.

[56] For a detailed discussion see *supra,* ch. 4, p. 67.

[57] Couch, *opus cit.,* vol. 1, p. 802, § 303.

[58] Trenton Mutual Life and Fire Ins. Co. *v.* Johnson (1854), 24 *N. J.* L. 576; Grattan *v.* National Life Ins. Co. (1878), 15 Hun (*N. Y.*) 74; Rawls *v.* American Mut. Life Ins. Co. (1863), 27 *N. Y.* 282; Scott *v.* Dickson, Adm'r (1884), 108 *Pa.* 6; Mowry *v.* Home Life Ins. Co. (1869), 9 *R. I.* 346; Insurance Co. *v.* Bailey (1871), 13 Wall. (*U. S.*) 616; Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457; Fehr *v.* Cawthon (1923), 293 *F.* 152.

[59] Thus, in the case of Hatch *v.* Hatch (1904), 35 *Tex.* Civ. App. 373, 375 the court stated: "Whatever may be the rule prevailing in other jurisdictions the rule of this State is that the beneficiary named in the policy, or an assignee thereof, to be entitled to hold an interest therein must have an

2. *Divorce.*

The general rule is that where a husband has designated his wife as beneficiary, her interest in the policy is unimpaired by subsequent divorce, whether the husband has reserved the right to change the beneficiary and failed to exercise it, or whether he has not reserved the right to change.[62] Here again, as well as in the creditor and debtor relation, Texas is an exception.[63] Certain states have also changed the general rule by statutory enactment, a statute of this type having been held constitutional.[64]

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insurable interest in the life of the insured, and when such insurable interest ceases, then interest in the policy terminates." The rule in such cases was laid down in Mut. Life Ins. Co. *v.* Blodgett (1894), 8 *Tex.* Civ. App. 45, 48: "The fact that the premium was paid by the beneficiary does not give to the contract the character of a wagering contract; nor does the fact that the beneficiary has no insurable interest in the life of the assured render the policy void as against public policy. The court will treat the person named as beneficiary, having no insurable interest, as a trustee appointed to collect the policy for the benefit of those legally entitled, thereby enforcing the contract by which the company has solemnly bound itself, and at the same time conserving public policy by preventing the stranger from gambling on the life of his fellow, or profiting by his death." See also Kennedy *v.* N. Y. Life Ins. Co. (1855), 10 *La.* Ann. 809; Wilson, G. H., "The Legal Consequences of the Cessation or Diminution of Insurable Interest under Life Insurance Policies," *P. A. L. I. C.* (1913-21), Paper 25, pp. 1-20. And it was held in Central Bank of Wash. *v.* Hume (1888), 128 *U. S.* 195, 205, that "if the debtor obtains the insurance on the insurable interest of the creditor, and pays the premiums himself, and the debt is extinguished before the insurance falls in, then the proceeds would go to the estate of the debtor." See further Crotty *v.* Union Mut. Life Ins. Co. (1892), 144 *U. S.* 621.

[60] Rittler *v.* Smith, Adm'x (1889), 70 *Md.* 261, 265.

[61] Wurzburg *v.* N. Y. Life Ins. Co. (1918), 140 *Tenn.* 59.

[62] Conn. Mut. Life Ins. Co. *v.* Schaefer (1876), 94 *U. S.* 457. Hodskins, F. G., "Divorce as Affecting the Right to Proceeds of Life Insurance," *P. A. L. I. C.* (1922-24), vol. 2, p. 269.

[63] Hatch *v.* Hatch (1904), 35 *Tex.* Civ. App. 373, 375. "A wife's interest in a policy on her husband's life ceases upon obtaining a decree of divorce and it is immaterial whether or not it was her fault that caused the divorce."

[64] Orthwein *v.* Germania Life Ins. Co. (1914), 261 *Mo.* 650, upholding Sec. 6944, R. S. 1909. See also Ky. State (1915), § 2121; § 1160, Civil Practice Act, N. Y. L. (1920), vol. 4, p. 392; Mason's Minn. Stat. (1927), § 3388.

One writer has interpreted the attitude of the courts on the whole question of insurable interest thus:[65]

> In conclusion, it may be said that the doctrine of insurable interest in life insurance, as applied by American courts, is not a single rule, but is a complex of rules of public policy designed to avert a number of harmful social and economic tendencies. Freedom of contract and of gift is still the underlying principle; it will be set aside only when the harmful tendencies of unrestricted freedom become substantial, as opposed to *nil* or negligible. The courts do not require that every contract, certainly not that every life insurance contract, should manifest a social purpose. On the other hand, in applying the principle of exclusion, the court looks not at the purpose or tendency of the individual contract, but at the tendency of contracts of that class. The test of harmfulness is empirical, and the results of its application may well vary with the changing state of society itself.

Company Practice.

For their own protection, life insurance companies exercise care in guarding against speculative insurance. "If moral hazard is apparent or suspected, a company is at liberty to decline the application without consideration of the legal definition of insurable interest."[66] In the earliest days of modern insurance, the companies were insistent upon the existence of an adequate interest. One of the regulations of the Equitable Society of London in 1762 provided that no person was to be permitted to insure the life of another until he satisfied the directors that he had an interest in such life "at least equal to the sum which he proposed to assure."[67] A similar provision is to be found in the Rules of the Pennsylvania Company.[68] Modern companies before granting policies are careful to inquire concerning the amounts of insurance already in force.[69] One disturbing force of increasing significance is that arising out of the growing use of life insurance for business purposes. Because of the large sums written in this manner, an unfavorable mortality experience on a few policies is likely to prove detrimental to those insuring in smaller amounts for family protection. As a matter of fact, the mortality on larger policies seems to have been excessive, even in early days.[70] One writer presents the matter in this light:[71]

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[65] Patterson, *opus cit.,* p. 421.

[66] Lindsay, Forbes, *Text Book of Life Insurance,* Pac. Mut. Life Ins. Co. (1916-17), p. 85.

[67] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. & C. M. Goodsell, N. Y. (1871), vol. 2, p. 635.

[68] Morris, H. S., *A Sketch of the Pennsylvania Company for Insurances on Lives and Granting of Annuities,* Lippincott, Phila. (1896), Appendix, p. 113. *Infra,* Appendix XV. For other instances see Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries 1683-1882,* Rev. Pub. & Print Co., Phila. (1888), pp. 669, 716. Many companies place an absolute limit on the amount of insurance which they will write on any one life. At first there was no limit placed by the Equitable Society of London, but it appeared "from the tenor of the Deed that none but small Sums were contemplated." In 1775, the limit was increased from £1500 to £2000; in 1783, to £3000; in 1790, to £5000; and in 1856 to £10,000. Walford, *opus cit.,* p. 635. While

> Life insurance was built up on the idea of conserving the home, of protecting the widow and children, of self-care and provision against old age. It was in quite recent times that various causes induced the use of its patiently acquired assets as collateral for the benefit of partners and, even more recently still, for the benefit of corporations or impersonal beneficiaries, thus diverting a system of indemnity and service based specifically upon human affections and the instincts of self-protection, into channels of mere commerce and speculation. This transfer of insurable interest, which is not yet fully established in law, is today one of the gravest questions of insurance and one with which legislation must early deal. . . . There ought not to be a union of non-human, impersonal, corporation and speculative risk with home or individual and human insurable interest.

Women.

In the past, life insurance companies have discriminated against women either by refusing to write insurance or by charging an extra

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such limits were probably placed in order to avoid a concentration of risk, the schedule of one company indicates that the value of the life insured was important. The amounts to be granted were fixed as follows:

"Under age 21, not over	$5,000
Ages 21 to 24 inclusive, up to	15,000
" 25 " 29 " "	20,000
" 30 " 49 " "	30,000
" 50 " 55 " "	20,000
" 56 " 60 " "	15,000
Ages over 60, not more than	5,000"

Chronicles of the Penn Mutual Life Insurance Company of Philadelphia (1922), p. 71.

[69] See Appendix XIII, Form of Application.

[70] For an analysis of such losses covering the period of 1865 to 1884, see *Insurance Monitor* (1885), vol. 33, p. 238.

[71] De Boer, J. A., "Historical Sketch" in The Business of Insurance, *opus cit,* pp. 283, 284.

premium.[72] The reason advanced was primarily that such insurance involved speculative and moral hazards because of a lack of insurable interest.[73] The Equitable of London, however, as early as 1772 "ordered that for the future the lives of females be assured upon the same terms as the lives of males." [74] In 1886 an American company adopted a similar resolution, and its subsequent mortality experience has been "decidedly favorable." [75] As the result of a study published in 1899, one company official recommended that women be accepted at the same rates as men on participating policies, but that they be placed in a special dividend class.[76] Six years later, out of fifty-one representative companies, thirty-seven accepted women on the same basis as men; thirteen required extra premiums or restricted them to certain policies; and one company refused to insure them.[77] Before placing women on a basis of equality with men, the Mutual Life Insurance Company of New York had charged an extra premium of one-half of one per cent between the ages of sixteen and forty-eight,[78] although extra premiums of varying amounts had been charged under different circumstances.[79]

While the early experience of this company does not appear to have been favorable, mortality investigations covering the periods 1885 to 1906, and 1919 to 1927, show that women are "better than men both by numbers and amounts." [80] At the present time women are insured on the same basis as men in practically all the large companies, although some restrictions are usually placed on disability and double indemnity benefits, and in some cases term policies are not issued.[81]

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[72] See, for example, the instructions of the London Assurance Corporation to its agents. Appendix XIV.

[73] Fouse, "Policy Contracts in Life Insurance," *opus cit.*, p. 42. Although the increased physical hazard at certain ages was recognized. See notes 72 and 78.

[74] Walford, Insurance Cyclopaedia, *opus cit.*, vol. 2, p. 634.

[75] *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia* (1922), p. 72.

[76] Gore, J. K., "Should Life Insurance Companies Discriminate Against Women?" *T. A. S. A.* (1899), vol. 6, pp. 380, 388. At that time, twenty out of thirty-nine American and Canadian companies charged no extra premiums. Of these twenty, seven had formerly charged extra premiums and four had put women in a special dividend class.

[77] Fouse, "Policy Contracts in Life Insurance," *opus cit.*, p. 40.

[78] Strong, W. M., and Weisse, F. S., "Women as Life Insurance Risks," *P. A. L. I. M. D.* (1930), vol. 16, p. 307.

[79] Weisse, F. S., and Strong, W. M., "Women as Life Insurance Risks," *T. A. S. A.* (1929), vol. 30, p. 434. See also the discussion, *T. A. S. A.* (1930), vol. 31, pp. 108-110.

[80] *Ibid.*, p. 435. See also Fouse, "Policy Contracts in Life Insurance," *opus cit.*, p. 42.

Assignment

Unlike the fire policy, which is a personal contract[82] and not assignable without the consent of the company, the life policy is freely assignable, subject, however, to legal and statutory restrictions, and to the provisions incorporated in the policy.[83]

It is generally held that an assignment is distinct from a change of beneficiary. One court has distinguished them as follows:[84]

> The assignment of a policy and a change of beneficiary are not the same, but different, things. An assignment is the transfer by one of his right or interest in property to another. It rests upon contract, and, generally speaking, the delivery of the thing assigned is necessary to its validity. The power to change the beneficiary is the power to appoint. The power of appointment must be exercised in the manner agreed upon in the contract of insurance.

Unless the insured has reserved the right to change the beneficiary, he cannot assign the policy without the latter's consent.[85] But the courts are not in agreement upon the effect of an assignment where the right to change the beneficiary has been reserved,[86] although the majority hold that such an assignment extinguishes the interest of the beneficiary.[87]

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[81] *Best's Illustrations,* A. M. Best Co., N. Y. (1930).

[82] Brownell *v.* Board of Education (1925), 239 *N. Y.* 369.

[83] Elliott, C. B., *A Treatise on the Law of Insurance,* Bowen-Merrill, Indianapolis (1902), § 362. The standard fire policy in common use provides that "This entire policy shall be void, unless otherwise provided by agreement in writing added hereto, . . . (e) if this policy be assigned before a loss." Pa. Stand. Fire Policy, lines 20-31. See also Couch, *opus cit.,* vol. 6, § 1450.

[84] Mutual Ben. Life Ins. Co. *v.* Swett et al (1915; C. C. A. 6), 222 *F.* 200, 205.

[85] Vance, *opus cit.,* p. 643.

[86] There are three classes of decisions: "(1) Those which hold an assignment is a change of beneficiary; (2) Those which hold an assignment is not a change but simply gives to the assignee all rights under the policy including the right to change the beneficiary but to be effective this right must be exercised; (3) Those which hold that an assignment does not affect the rights of a beneficiary but transfers to the assignee only such rights as may revert to the insured in the event of the prior death of the beneficiary." Henshaw, S. K., "Rights of Beneficiaries as Affected by Assignments," *P. A. L. I. C.* (1925-27), vol. 3, p. 47.

[87] Vance, *opus cit.,* p. 568.

Legal and Statutory Provisions.

1. *In England.*

(a) Legal.

The attitude of the English courts toward assignment has been a liberal one. The following clause appeared in a policy issued by The Victoria Life Assurance and Loan Company in 1842:[88]

> Policies effected by persons on their own lives, who shall die by duelling or by their own hands, or by the hands of justice, will become void, so far as regards the executors or administrators of the person so dying, but will remain in force only to the extent of any bonâ fide interest which may have been acquired by any other person under an actual assignment by deed for a valuable consideration in money, or by way of security or indemnity, or by virtue of any legal or equitable lien as a security for money, upon proof of the extent of such interest being given to the directors to their satisfaction.

The policy contained an additional clause relating to suicide which was in conflict with the above clause, and it was contended that the latter would offer an encouragement to suicide, thus contravening public policy. The court, after pointing out that the general use of such clauses was indicative of the general opinion that they were unobjectionable, stated:[89]

> That the condition under discussion may promote evil by leading to suicide, is a very remote and improbable contingency. . . . When we are called upon to nullify a contract on the ground of public policy, we must take care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind.

(b) Statutory.

Prior to 1867 assignments were enforceable in equity,[90] but with the passage of the Policies of Assurance Act[91] in that year, policies of life insurance were assignable at law. It was provided that written notice of the date and purport of the assignment had to be given to the company, and the date on which such notice was received regulated the priority of all claims.[92]

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[88] Moore *v.* Woolsey (1854), 4 El. & Bl. (*Eng.*) 243, 245.

[89] *Ibid.*, p. 255. Although not the general rule at the time, a great many companies paid claims in case of death by suicide, duelling, or at the hands of justice where an assignment had existed six or twelve months at the date of death. "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, pp. 241, 243.

[90] Wright *v.* Wright (1749-50), 1 Ves. Sr. (*Eng.*), 409, 411; Steinback *v.* Diepenbrock (1899), 158 *N. Y.* 24.

[91] 30, 31 Vict., ch. 144.

2. *In the United States.*

(a) Legal.

(i) Insurable Interest.

Vance has thus classified assignments of life policies according to the circumstances under which they are made: [93]

> (1) Conditional assignments, intended to secure debts due, or advances to be made. (2) Absolute assignments, made with the honest intent to transfer the whole interest of the assignor-insured in an existing policy to the assignee, who may be either (a) a volunteer thus designated as beneficiary, or (b) a purchaser for value. (3) Pretended assignments intended to evade the law against wager policies.

There is an irreconcilable conflict as to whether an assignee of a life policy must have an insurable interest in the life insured.[94] Criticism has been made that in addition to state statutes, "principles of the common law, of equity, or of a mixture of the two, perhaps, sometimes, without regard to either" have had their effect in formulating decisions.[95] The majority of jurisdictions, however, have adopted the rule laid down in an early New York decision to the effect that "an assignee, in good faith of an existing life policy which was valid when effected, is entitled in all cases to demand and require payment of the whole sum insured." [96] The assignment must be made in good faith, without acting as a cloak for a wager, "and the fact that the assignee has no insurable interest in the life of the insured is neither conclusive nor prima facie evidence that the transaction is illegal." [97] The reason for the adoption of this attitude was expressed by Judge Sanborn in the following words: [98]

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[92] Sprague, A. E., "Elementary Notes on Titles to Life Policies," *J. C. I. I.* (1921), vol. 24, pp. 55, 71. See also Syder, E. W., "The Life Assurance Contract," *J. C. I. I.* (1913), vol. 16, pp. 291, 301.

[93] Vance, *opus cit.*, p. 644.

[94] Brogi *v.* Brogi (1912), 211 *Mass.* 512, 514.

[95] "Assignment of Policies in the Colonies and United States," *J. I. A.* (1889), vol. 27, p. 423.

[96] St. John *v.* American Mut. Life Ins. Co. (1855), 13 *N. Y.* 31, 41.

[97] Aetna Life Ins. Co. *v.* Kimball (1921), 119 *Me.* 571, 575.

[98] Gordon *v.* Ware Nat. Bank (1904; C. C. A. 8) 132 *F.* 444, 446-448.

> There is some conflict of authority among the courts of the states upon the question whether or not the assignment of a policy for value in good faith by one who has an insurable interest to one who has not such an interest is valid. The Supreme Court of Indiana, in the case of Franklin Life Ins. Co. *v.* Hazzard, 41 Ind. 116, 13 Am. Rep. 313, declared that such an assignment was as obnoxious to the rule against wager policies as the issue of a policy to one without interest, and that it was void. The courts of the states of Alabama, Kansas, Kentucky, Missouri, North Carolina, Pennsylvania, Texas, and Virginia have followed this declaration.
>
> The rule adopted by these states greatly detracts from the value of life insurance policies, and restricts their commercial value; for, if their possible purchases are limited to those who have insurable interests in the lives they insure, it is obvious that buyers will be few, and their commercial value and the traffic in them must be much less than if all men may become their lawful purchasers. In view of this fact the Supreme Court of the United States and the courts of the great commercial communities of this country—of New York, Ohio, Massachusetts, Illinois, Michigan, New Jersey, California, Minnesota, Connecticut, Louisiana, Rhode Island, Wisconsin, Nebraska, Tennessee, South Carolina, Mississippi, and Maryland—have repudiated the old declaration of the Supreme Court of Indiana, and have adopted the more modern and rational rule that "any person has a right to procure an insurance on his own life, and to assign it to another, provided it is not done by way of cover for a wager policy." . . . This is a great commercial nation. The policy of the nation, the business habits and acts of its citizens and the tendency of the decisions of its courts are to depart more and more from the old rule that choses in action are not assignable, to make them more and more the subject of traffic and commerce, and to sustain their transfers in the ordinary course of business.

Some years later the Supreme Court decided that "so far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property. . . . To deny the right to sell except to persons having such an interest is to diminish appreciably the value of the contract in the owner's hands." [99] While recognizing that "a contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end," [100] Mr. Justice Holmes decided that "the danger that might arise from a general license to all to insure whom they like does not exist [in assignment]. Obviously it is a very different thing from granting such a general license, to allow the holder of a valid insurance upon his own life to transfer it to one whom he, the party most concerned, is not afraid to trust." [101] But the Supreme Court did not always regard assignments so favorably.[102]

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[99] Grigsby *v.* Russel (1911), *222 U. S.* 149, 156.

[100] *Ibid.*, p. 154.

Most assignments are made for the purpose of securing debts and though often absolute in form, "if they are intended to serve only as collateral security that fact may be freely shown." [103] Any excess above the debt plus premiums and interest thereon is held in trust by the assignee for the personal representatives of the deceased debtor.[104]

(ii) Assignment Without Consent.

In the absence of a clause prohibiting assignment absolutely, failure to comply with the terms of a clause requiring that the company be notified of an assignment will not void the policy.[105] The principle has been well stated by Justice Mitchell: [106]

> In this case the consent to an assignment is not necessary. All that is required is that the assignment be in writing on the policy, and a copy of it furnished to the company, within thirty days. This provision is not one which is intended to guard against increased risks, and does not go to, or infuse itself into, the essence of the contract. Its sole purpose is to protect the company against the danger of having to pay the policy twice, by requiring written evidence of any change of beneficiaries to be put into reliable form, and promptly furnished to the company.

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[101] *Ibid.*, p. 155. See also Hawley *v.* Aetna Ins. Co. (1920), 291 *Ill.* 28; Nye *v.* Grand Lodge (1894), 9 *Ind.* App. 131, Indiana having overruled its earlier decision; Rittler *v.* Smith, Adm'x (1889), 70 *Md.* 261; Brogi *v.* Brogi (1912), 211 *Mass.* 512; Wright *v.* Mut. Benefit Life Ass'n (1890), 118 *N. Y.* 237; Steinbach *v.* Diepenbrock (1899), 158 *N. Y.* 24; N. Y. Mut. Life Ins. Co. *v.* Armstrong, Adm'x (1886), 117 *U. S.* 591; Couch, *opus cit.*, vol. 1, § 299; Joyce, *opus cit.*, vol. 2, § 918.

[102] Cammack *v.* Lewis (1872), 15 Wall. (*U. S.*) 643; Warnock *v.* Davis (1881), 104 *U. S.* 775, 782: "But if there be any sound reason for holding a policy invalid when taken out by a party who has no interest in the life of the assured, it is difficult to see why that reason is not as cogent and operative against a party taking an assignment of a policy upon the life of a person in which he has no interest." Pennsylvania adopted the same rule in Keystone Mut. Benefit Ass'n *v.* Norris (1886), 155 *Pa.* 446, but the rule is at present unsettled. See Vance, *opus cit.*, p. 170.

[103] Vance, *opus cit.*, p. 644.

[104] *Ibid.*, p. 645.

[105] Succession of Risley (1845), 11 Rob. *La.* 298.

[106] Hogue *v.* Minnesota Packing & Prov. Co. (1894), 59 *Minn.* 39, 44.

All that could, at the very most, be claimed as the effect of a noncompliance with this stipulation, is that the company might disregard the attempted assignment, and pay the money to the original beneficiary; in other words, such attempted assignment would be merely voidable at the option of the company.

Since the provision of notice is for the benefit of the company, it may waive the requirement if it sees fit, and where there is doubt the question is one for the jury.[107]

(iii) Reassignment.

While a policy of life insurance is not a negotiable instrument,[108] it may be reassigned. Where, for example, "an indorser of a promissory note to whom a policy of insurance has been assigned as collateral transfers the assignment to the holder of the note to secure the debt to secure which the policy had been assigned to him, the title vests in the transferee of the indorser, so far as that is necessary to enable the latter to hold the policy as collateral security for the debt and to sustain an action upon the policy." [109] But the transferee holds the same position as the original assignee, subject to the equities existing between the latter and the insured, unless the insured is equitably estopped by his conduct from asserting those equities.[110]

(iv) Surrender of the Policy.

Unless otherwise agreed to in the assignment, the assignee cannot deprive the insured of his policy by surrendering it to the company without giving notice of his intention so to do, and allowing a reasonable time for redemption.[111]

(v) Death.

Where death has matured the policy, the beneficiary may freely assign the proceeds without complying with the provisions of the policy.[112]

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[107] *Ibid.;* Corcoran *v.* Mutual Life Ins. Co. of N. Y. (1898), 183 *Pa.* 443.

[108] Hogue *v.* Minnesota Packing & Prov. Co. (1894), 59 *Minn.* 39, 43; Brown *v.* Equitable Life Assur. Soc. of the U. S. (1899), 75 *Minn.* 412, 419.

[109] Corcoran *v.* Mut. Life. Ins. Co. of N. Y. (1898), 183 *Pa.* 443, 444; Gordon *v.* Ware Nat. Bank (1904; C. C. A. 8), 132 *F.* 444.

[110] Brown *v.* Equitable Life Assur. Soc. of the U. S. (1899), 75 *Minn.* 412, 419. Where an insured neglects to pay premiums for eleven years, he is guilty of laches, and is estopped from asserting his rights.

[111] Manton *v.* Robinson (1896), 19 *R. I.* 405.

[112] Couch, *opus cit.,* vol. 6, § 1459.

(vi) Fraud.

Where a life insurance company consents to an assignment, it is not precluded from setting up as against the assignee fraud in the original application, of which it had no notice at the time of consent.[113] And where a reinstatement of a policy is secured through material fraudulent misrepresentation, the same rule is effective.[114]

(vii) Governing Law.

Assignments are regarded as separate and distinct contracts, and are governed by the law of the place of the execution of the assignment, regardless of the place where the original contract was made.[115]

(b) Statutory.

New York was the first state to pass a law for the protection of life insurance policies against the claims of creditors.[116] In 1864 the New York Court of Appeals decided that a policy of insurance to a married woman, made under this law, for her benefit and that of her children, could not be transferred so as to divest the interest of the wife or her children.[117] It would be, said Chief Justice Denio, "a violation of the spirit of the provision to hold that a wife, insured, under this Act, could sell or traffic with her policy as though it were realized personal property or an ordinary security for money.[118]

An attempt was made in 1873 [119] to remedy the effects of this decision by statute, but it was not until 1879 [120] that effective legislation was passed. At the present time a married woman, where she insures her husband's life, may dispose of such policies by will or assignment, and "A policy of insurance on the life of any person for the benefit of a married woman is also assignable and may be surrendered by the company issuing the same, by her, or her legal representative, with the written consent of the assured." [121]

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[113] Northwestern Life Ins. Co. *v.* Montgomery (1902), 116 *Ga.* 799.

[114] State Mut. Life Ins. Co. *v.* Rosenberry (1919; *Tex.* Comm. App.), 213 S. W. 242, reversing Texas Civil Court of Appeals which had accepted as a precedent Ellis *v.* Ins. Co. (C. C.), 32 *F.* 640, a case involving a fire policy.

[115] *Supra,* ch. IV, n. 86.

[116] N. Y. L. (1840), ch. 80. "An Act in respect to insurance on lives for the benefit of married women." See also Lewis, C. T., "Laws Protecting Life Insurance Against Creditors," *Proc. Fourth International Congress of Actuaries,* Act. Soc. America (1904), vol. 1, p. 873.

[117] Eadie *v.* Slimmon (1864), 26 *N. Y.* 9.

[118] *Ibid.,* p. 18.

[119] N. Y. L. (1873), ch. 821.

[120] N. Y. L. (1879), ch. 248.

The rule of Eadie *v.* Slimmon was not approved by all the states and many had statutes permitting assignment.[122]

Company Practice.

Even in the earliest days of modern insurance, companies incorporated some provision in the policy permitting assignment with some restrictions, usually as to notice. In the case of the Equitable Society of London, the proposed by-laws of 1763 provided as follows: [123]

> All assignments which shall be made of the policy shall be briefly entered in a book to be kept for that purpose; and for every such entry shall be paid for the use of the Society the sum of . . .; and if the policy shall be assigned, and that assignment shall not be produced, or notice thereof given to the Actuary of the Society, so that entry thereof may be made within six months from the date of such assignment, there shall be forfeited to the use of the Society, the sum of £3 6s. 8d., which sum, if not otherwise paid, shall be deducted out of the claim which shall become due on such policy at the time of the payment of the said claim.

American companies also permitted assignment, although in the plan of agreement between the Presbyterian Ministers Corporation and the annual contributors there was provided "III. That no Annuity be transferable, or liable to be sold; in as much as that Practice would frustrate the very End of the Charter, and of the pious Contributions for this purpose." [124]

Various limitations were placed on the right of assignment, ranging from those requiring no notice of assignment,[125] to those which made necessary a proof of the insurable interest of the assignee,[126] or even to those which, in the absence of notice, declared the policy void.[127] At the present time the clause in common use requires that the original assignment or a certified copy thereof be filed with the company at its home office, and provides that it assumes no liability as to the validity or effect of any assignment.[128] Some companies also stipulate that "All assignments shall be subject to any indebtedness to the Company on account of or secured by this Policy." [129]

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[121] N. Y. Cons. Laws (1923), Domestic Relations Law, ch. 14, § 53.

[122] Lewis, *opus cit.*, p. 878. The history of such laws is repeated in most of the other states. See this article for a detailed study. See also *infra*, the chapter on the beneficiary.

[123] Walford, "Insurance Cyclopaedia," *opus cit.*, vol. 2, p. 631. "These bye-laws were never confirmed; but the above seems to indicate the practice of the Society." See also p. 636.

[124] Fowler, *opus cit.*, p. 614.

[125] *Ibid.*, p. 669.

[126] *Ibid.*, p. 716. "IV. In the case of the assignment of a policy, (whether as security or otherwise,) satisfactory proofs of the amount of the assignee's interest in the insured life, must be furnished with the proofs of death."

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[127] *Ibid.,* p. 710. "No assignment of this Policy shall be of any force or effect, unless approved by the Company, and endorsed thereon by the Secretary or other authorized officer, within thirty days from the date thereof; otherwise the premium shall be considered sunk for the benefit of the Assurers."

[128] *Flitcraft Life Insurance Manual* (1929), *passim.*

[129] See Appendix X.

Chapter VI

Writing of the Policy

The Law of Agency

In General.

One of the features of the institution of life insurance which has been instrumental in its growth is the existence of an agency system. The nature of the business, involving as it does the purchase of future benefits, primarily for third persons, requires personal solicitation.[1] The relationship established between the company and the insured, through the agent, is governed basically by the general law of agency,[2] although most states have enacted specific laws with respect to insurance agents.[3] Companies early introduced clauses into their policies limiting the powers of their agents.[4]

The general rule of agency is that the principal is responsible for the acts of his agent.[5] Where a sub-agent has been openly clothed with such powers, he also may bind the insurer by exercising the apparent powers of the agent.[6] In life insurance the medical examiner likewise is usually regarded as the agent of the company.[7] The reason for the rule that an agent's acts bind the principal has been well stated in a leading case by Mr. Justice Miller:[8]

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[1] Huebner, S. S., *Life Insurance,* Appleton, N. Y. (1928), pp. 348, 349.

[2] N. Y. Life Ins. Co. *v.* Fletcher (1886), 117 *U. S.* 519, 529.

[3] For the purposes of this study, the regulations are too numerous to cite. The laws usually define the term, and provide for licensing, and for revocation of license in case of various kinds of misconduct set forth. Usually the agent is made the agent of the company and not of the insured. See, for example Ill. Ins. L. (1929), ch. V § 23; Mass. Gen. L., ch. 175, §§ 162, 163; N. J. Gen. Ins. Act, para. 104; N. Y. Ins. L., § 91; Ohio Ins. L. (1930), § 9407; Pa. L. (1921), P. L. 682, art. 4, § 414; Wash. Rem. Comp. Stat. § 7226.

[4] "Agents of the company are in no case authorized to make, alter or discharge contracts or waiver forfeitures." In use about 1860. Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries 1683-1882,* Rev. Pub. & Print. Co., Phila. (1888), p. 716.

[5] Forward *v.* The Continental Ins. Co. (1894), 142 *N. Y.* 382, 389. "Insurance companies doing business by agencies at a distance from their principal place of business, are responsible for the acts of the agent, within the general scope of the business intrusted to his care . . ."

[6] Vance, W. R., *Handbook of the Law of Insurance,* West Pub. Co., St. Paul, 2d Ed. (1930), p. 426, § 122.

[7] Sternaman *v.* Metropolitan Life Ins. Co. (1902), 170 *N. Y.* 13. From the syllabus: "When an applicant for life insurance makes truthful answers to all questions asked by the medical examiner, who fails to record them as

> The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy, rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company in all that is said or done in making the contract.

The court found no fault with the practice of the companies, making the agent the agent of the company only for the receipt of the premium and the delivery of the policy, when the companies waited for the parties to come to them, but "to apply such a doctrine, in its full force to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims."[9]

Limitations.

The insured is not affected by any secret limitations placed upon the agent's apparent powers, unless communicated to him.[10] Where

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given and omits an important part, stating that it is unimportant, the beneficiary may show in an action upon the policy the answers actually given, in order to defeat a forfeiture claimed by the insurer on account of the falsity of the answers as recorded, even if it was agreed in the application that the medical examiner, employed and paid by the insurer only, should not be its agent but solely the agent of the insured and the latter warranted the truth of the answers as they appeared in the application." This decision has since been rendered ineffective by statute. See *infra,* this chapter. See further Grattan *v.* The Metropolitan Life Ins. Co. (1880), 80 *N. Y.* 281; N. Y. Life Ins. Co. *v.* Fukushima (1923), 74 *Col.* 236, 239: "The solicitor and medical examiner of an insurance company are its agents, their acts and knowledge are those of their principal and the insured cannot be held responsible for a wrong perpetrated through their fraud or negligence. False statements in an application or examination known to them at the time made to be false are no defense." Moncur *v.* Western Life Ind. Co. (1921), 269 *Pa.* 213.

[8] Insurance Co. *v.* Wilkinson (1871), 13 Wall. (*U. S.*) 222, 234.

[9] *Ibid.,* p. 235.

[10] Forward *v.* The Continental Ins. Co. (1894), 142 *N. Y.* 382, 389; Sternaman *v.* Metropolitan Life Ins. Co. (1902), 170 *N. Y.* 13; Insurance Co. *v.* Wilkinson (1871), 13 Wall. (*U. S.*) 222; Insurance Co. *v.* Norton (1877), 96 *U. S.* 234; Vance, *opus cit.,* p. 407, § 117, c. For a full discussion see p. 431 *et seq.,* §§ 123-126.

the insured is led to believe that a third party is an agent, the principal is estopped from denying the existence of agency. "Ostensible authority to act as agent may be conferred if the party to be charged as principal, affirmatively or intentionally, or by lack of ordinary care, causes or allows third persons to trust and act upon such apparent agency." [11] This is based on the rule that where both parties are innocent, he must suffer whose actions were responsible for the occurrence of the injury.[12] So too the principal is bound by the knowledge of the agent even where the latter has not communicated it to him.[13]

The Application

Company Practice.

It has been customary since the inception of modern insurance to require the insured to fill out some sort of application or declaration.[14] The form of the proposal of the Equitable Society was relatively short,[15] and the following declaration was required of all persons insuring their own lives, in conformity with clause seventeen of the Deed of Settlement.[16]

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[11] Violette *v.* Ins. Co. of Pa. (1926), 92 *Wash.* 685, 688, quoting Phoenix Ins. Co. *v.* Walter, 51 *Neb.* 182.

[12] Vance, *opus cit.,* p. 114; Sternaman *v.* Metropolitan Life Ins. Co. (1902), 170 *N. Y.* 13.

[13] Vance, *opus cit.,* p. 407, § 117, d; Proudfoot *v.* Montefiore (1867), L. R. 2 Q. B. (*Eng.*) 511, 521. In this case it was the agent of the insured who had failed to communicate certain information. A policy of insurance was granted, without the information being given to the underwriter, and it was held void on the ground of concealment.

[14] In the case of the Society of Assurance for Widows and Orphans, founded in 1699, no medical examination was required, but this was compensated for by a probationary period of six months "within which if death took place there should be no claim." Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1885-86), vol. 25, p. 131.

[15] "The form of proposal to be filled up by persons desirous of entering the Society was as follows:

'(1) Name and profession of the life to be assured ——— (2) Place and date of birth ——— (3) Present residence ——— (4) Age ——— (5) Sum ——— (6) Term ——— (7) By whom made ——— (8) To give a reference to 2 persons of good repute (one if possible of the medical profession), to ascertain the present and general state of health of the life to be assured ——— (9) If had the smallpox? ——— (10) If had the cowpox ——— (11) If had the gout? ——— (12) If ever ruptured? ———

'Note.—Persons who do not appear before the court of directors, or who cannot refer to a person of the medical profession, are required to give a reference to 3 persons for an account of the present and general state of their health.'" Walford, "History of Insurance," *opus cit.,* (1886-87), vol. 26, p. 8.

> I..............................being desirous of becoming a member of the Society for *Equitable* Assurance, etc., and intending to make assurance in the sum of ....upon and for the continuance of my own life, and having perused and considered that clause (17) of the Deed of Settlement of the said Society which requires a declaration in writing of the age, state of health and other circumstances attending the person whose life shall be proposed to be assured, do hereby declare and set forth that my age does not exceed......................; that I have had the cow (or small) pox................; and have had the gout; and that I am not afflicted with any disorder which tends to the shortening of life; and I do hereby agree that this declaration be the basis of the contract between the said Society and me, and that if any untrue averment is contained in this declaration, all moneys which shall have been paid to the Society upon account of the assurance made in consequence thereof, shall be forfeited. Dated the......................day of......................in the year of our Lord......................

In the prospectus of the Westminster Society, established in 1792, there was provision for a penalty in case the insured did not appear before the Society.[17]

At the time of the formation of the Pennsylvania Company in Philadelphia, the information required of the insured was much more detailed.[18] In the first years of mutual insurance, "applicants were generally expected to appear at the office of the company, obtain the printed form of proposal, and answer the questions contained therein relating to health, occupation, etc.," [19] in the blanks left for that purpose.[20] The following is a typical declaration of the period: [21]

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[16] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. & C. M. Goodsell, N. Y. (1871), vol. 2, pp. 632, 633.

[17] "Persons to be insured not appearing at the office, or to one of the Society's Agents, must pay a fine of 10 s. per-cent for an Insurance for one year; 15 s. per-cent for seven years; and 20 s. per-cent for the whole continuance of life; in the first payment only." Walford, "History of Insurance," *opus cit.* (1886-87), vol. 26, p. 21.

[18] See Appendix XI.

[19] Knight, C. K., *A History of Life Insurance in the United States to 1870,* Phila. (1920), p. 100.

[20] Vose *v.* Eagle Life & Health Ins. Co. (1850), 6 Cush. (*Mass.*) 42, 47.

[21] Fowler, *opus cit.,* p. 676.

Declaration:—I,..............................of the.............................., wishing to effect an insurance with the..............................Company in the sum of..............................dollars upon my Life for the term of [whole life or years], do hereby agree, that the answers which are given to the following questions shall be the basis of the contract between the said company and me; and that if any untrue averment be contained therein, or if any material circumstance or information touching my past or present state of health or habits of life, or any disease with which the directors of said company ought to be made acquainted, be omitted, then all the money which shall be paid to said company on account of the said insurance shall be forfeited.

At..................this................day of........................one thousand eight hundred and.................

Signed,

....

The above declaration was usually accompanied by a blank signed by the family physician, a blank signed by an acquaintance, and a certificate of the medical examiner.[22] With the growth of the business, the companies became more and more curious of the applicant's health, habits, past life, and heredity. Evidence of this is found in the questions asked by the medical examiner.[23] At the present time the insured is required to fill out an application blank consisting of two parts, one of a general nature, and the second containing statements to the medical examiner.[24] In addition, there are the medical examiner's report and an inspection report.[25]

Basis of the Contract.

The application in the law of insurance is merely a proposal or offer by the applicant to the company, and it can become a contract only upon acceptance by the company.[26] While there is a conflict of opinion as to whether the application is a part of the contract, the general rule seems to be that courts will not make it so by construction. This is because the contract is governed by the intent of the parties, and forfeitures are not favored.[27] Where the clearly expressed intention of the parties is to make the application a part of the contract, the courts will so construe it.[28] As a matter of fact, from the earliest times companies stipulated that the declaration and application were the basis of the contract, and the policy provided that if the statements, upon the faith of which the contract was made, were untrue, the policy should be void.[29] Modern policies usually provide that the policy is issued in consideration of the application and of the payment of the first premium, and "this policy and the application, copy of which is attached, constitute the entire contract." [30]

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[22] *Ibid.* See also p. 698. For excellent reproductions of these various forms, see Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company,* N. Y. (1895), ch. IV.

[23] For the form used in 1873, see Appendix XII. See further *The American Life Assurance Magazine,* N. Y. (Jan.-Dec., 1875), vol. 16, pp. 133-135.

[24] For copies of these forms, see Appendix XIII.

[25] Maclean, J. B., *Life Insurance,* McGraw-Hill, N. Y., 1st Ed. (1924), pp. 154-159.

[26] Couch, G. J., *Cyclopedia of Insurance Law,* Lawyers Co-operative Pub. Co., Rochester (1929), vol. 1, p. 146, § 84.

Additional Papers.

For the purpose of ascertaining and determining the rights of the parties, the policy, application, and additional papers are construed together and treated as one instrument.[31] Furthermore, the contract is presumed to be made in accordance with the law of the land, "including the statutory laws which are in force and applicable, and such laws enter into and form a part of the contract, as much as if actually incorporated therein." [32] Nor can such laws usually be waived.[33]

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[27] *Ibid.*, vol. 1, p. 260, § 135. Conditions stated in an application for life insurance cannot be regarded as a part of the contract, unless they are included in the policy, or the application is made a part of the policy by proper reference. Manhattan Life Ins. Co. *v.* Verneuille (1908), 156 *Ala.* 592. See also *supra,* ch. 4, general rules underlying the construction of life policies.

[28] "As a general rule, a contract of insurance consists of whatever the express agreement of the parties provides shall form a part thereof, including, in addition to the certificate or policy proper, if so agreed and properly evidenced, the application, medical examination, by-laws, etc." Couch, *opus cit.,* vol 1, p. 260, § 134. Vose *v.* Eagle Life & Health Ins. Co. (1850), 6 Cush. (*Mass.*) 42, 47; Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136; Wadsworth *v.* Jewelers & Tradesmen's Co. (1892), 132 *N. Y.* 540, 542. But the "mere statement that an exhibit is made a part of the contract is not controlling in determining whether the terms of the contract can be violated by the exhibit." Johnson *v.* Grand Fraternity (1919; C. C. A. 8), 255 *F.* 929.

[29] *Supra,* declaration of the Equitable Society. See also Appendix VIII.

[30] See Appendix X. Flitcraft Life Insurance Manual (1929).

[31] Royal Neighbors of America *v.* Fortenberry (1926), 214 *Ala.* 387; American Insurance Co. *v.* Stoy (1879), 41 *Mich.* 385, 389; Foot *v.* Aetna Life Ins. Co. (1875), 61 *N. Y.* 571; Stinchcombe *v.* N. Y. Life Ins. Co. (1905), 46 *Or.* 316. *Supra,* note 28.

[32] Couch, *opus cit.,* vol. 1, p. 297, § 150.

[33] *Ibid.,* p. 307, § 156. See *infra,* n. 41

Legislation.

1. *In General.*

Until about the year 1870 it was not customary for a copy of the application to be attached to the policy.[34] At the present time statutes requiring the application, or a copy thereof, to be annexed to, incorporated in, or endorsed on the policy are found in many states.[35] Others provide that the contract be plainly expressed in the policy, or that the policy contain the entire contract.[36] The development of such legislation has been gradual. Massachusetts enacted such a law with respect to fire policies in 1861,[37] although the first law dealing with life policies was passed in 1893.[38] Pennsylvania, in 1881, provided with reference to both life and fire insurance that the application, constitution, by-laws, or other rules of the company which are referred to in an insurance policy, must be attached, under penalty of not being a part of the contract, nor of being received in evidence.[39] In New York, as well as in many other states, the passage of such laws was hastened by the Armstrong investigation.[40] The present New York requirement embodies the recommendation at that time.[41] Even before the investigation, however, most of the companies followed the practice of attaching a copy of the appli-tion.[42]

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[34] Seay, H. L., "Broadening Insurance Coverage to Meet Life's New Problems," *P. A. L. I. P.*, (1928), vol. 22, p. 54. In England, even at the present time, it is not customary. See the written discussion by E. E. Rhodes, of an article by Henry Moir, "Divergent Developments of Life Insurance in Britain and America," *T. A. S. A.* (1928), vol. 29, p. 276.

[35] Couch, *opus cit.*, vol. 1, p. 274, § 138.

[36] *Ibid.*, p. 278.

[37] Mass. L. (1861), ch. 152. The "conditions of insurance shall be stated in the body of the policy, and neither the application of the insured nor the by-laws of the company, as such, shall be considered as a warranty or part of the contract." This was modified to read "except so far as they are incorporated in full into the policy, . . ." Mass L. (1864), ch. 196.

[38] Mass. L. (1893), ch. 434.

[39] Pa. L. (1881), Act no. 23, p. 20.

[40] N. Y. L. (1906), ch. 326. *Report of the Joint Committee of the Senate and Assembly, etc.*, N. Y. (1906), 10 vols., vol. 10, p. 440. The report of the Committee of Fifteen of Chicago (1906) printed in *N. J. Senate Investigation*, vol. 3, p. 929, also favored such a provision.

[41] N. Y. Ins. Law, § 58. "Every policy of insurance issued or delivered within the state on or after the first day of January, nineteen hundred and seven, by any life corporation doing business within the state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writings unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the

2. *Purpose.*

The acts referred to in the preceding section are within the power of the state. The reason for them has been set forth by one court as follows:[43]

> The purpose of the Legislature was that the assured might know from his policy what his contract was, and that contracts not contained in the policy, or written upon the back of it or attached to it, should not be considered, in order to avoid imposition by agents eager to earn commissions, and to avoid the litigation incident thereto after the death of the assured, when his tongue had been forever silenced, and any explanation he might have made could not be told.

Furthermore, courts have upheld these statutes on the ground of sound public policy,[44] and ruled that they do not impair the right of contract.[45]

3. *Penalty Provided.*

Where the company fails to attach a copy of the various papers, it can not introduce as evidence for the purpose of defeating the contract, any fraudulent representations as to health, habits, other

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absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void." See also Mass. Gen. L., ch. 175, § 131.

[42] Of fifty-one representative companies, thirty-eight voluntarily attached a copy of the application, and thirteen did so when the law required it. Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. Pol. & Soc. Sci. (1905), p. 40.

[43] Provident Sav. Life Assur. So. *v.* Puryear's Admr. (1900), 109 *Ky.* 381, 387.

[44] Rauen *v.* The Prudential Ins. Co. of America (1906), 129 *Iowa* 725, 733: "It is within the unquestioned province of the State to provide the conditions upon which insurance corporations may do business, and to provide the form and scope of the contracts which they are authorized to make. It is clearly not in excess of this authority for the Legislature to enact that the entire contract between the parties, and all conditions and stipulations by which the policy may be avoided, shall be embodied in or attached to the policy delivered to the insured; . . ." See also Coughlin *v.* Reliance Life Ins. Co. (1925), 161 *Minn.* 446.

[45] New Era Life Ass'n *v.* Musser (1888), 120 *Pa.* 384, 389: "The Act of 1881 was but the exercise of the clearly recognized power of the state to regulate the mode by which contracts shall be made and proved. It is a wise and beneficent act, founded upon sound reasons of public policy; it affords protection to persons who insure their lives or property, and can injure no company conducted upon honest business principles."

insurance, etc., contained therein.[46] This applies to the medical examination as well.[47] Furthermore, courts have decided that a copy which is not "reasonably legible" will not satisfy the requirements of such acts.[48] While the insured is usually favored by such legislation, in New York, at least, it sometimes works a hardship on him. Thus, where the medical examiner falsely entered upon the examination blank, answers which were truthfully given by a Polish woman unable to speak English, it was held that the company was not bound.[49]

Estoppel and Waiver

Introduction.

As previously stated, the courts generally have ruled that life insurance agents and medical examiners are the agents of the company, not only for the collection of the premium and the delivery of the policy, but also when acting for the insured in filling out the various proposals for insurance.[50] As decided by one court, "where an applicant for life insurance, in good faith, gives truthful answers to the questions asked him, but the agent, whether purposely or otherwise, without the knowledge or connivance of the applicant, inserts false answers, the wrong is that of the insurer, and the latter is estopped from imputing it to the assured." This, and the fact that the insurer is bound by the knowledge of its agent[51] have frequently brought before the courts the perplexing question of modification or reformation of the contract by parol testimony. The problem is further complicated by the existence in most policies of a clause similar to the following:[52]

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[46] Provident Sav. Life Assur. So. *v.* Puryear's Admr. (1900), 109 *Ky.* 381; Mees *v.* Pittsburgh Life & Trust Co. (1915), 154 *N. Y.* S. 660; New Era Life Ass'n *v.* Musser (1888), 120 *Pa.* 384; Ritter *v.* Mutual Life Ins. Co. of N. Y. (1898), 169 *U. S.* 139, 144.

[47] Rauen *v.* The Prudential Ins. Co. of America (1906), 129 *Iowa* 725; Moncur *v.* Western Life Ind. Co. (1921), 269 *Pa.* 213.

[48] Fidelity Mut. Ins. Co. *v.* Preuser (1922), 195 *Ky.* 271, 274: "The failure to attach to the policy a copy of the application that is reasonably legible was, in our judgment, equivalent to a waiver of appellant's right to claim under the application. The printing in the photographic copy is too small and indistinct to effectuate the purpose of the statute, which, as we have indicated, is to enable the policyholder as well as the insurer to be fully informed at all times of the exact terms of the contract of insurance."

[49] Kwiatkowski *v.* Brotherhood of American Yeomen (1926), 243 *N. Y.* 394. In the recent case of Minsker *v.* John Hancock Mut. Life Ins. Co. (1930; *N. Y.* Ct. App.), 173 N. E. 4, 5, the court stated the principle as follows: "When an insured receives a policy, it is his duty to read it or have it read, and, if an application incorporated therein does not contain correct answers to the questions asked by the medical examiner it is his duty to have it corrected. In such circumstances a recovery will no longer be permitted because the medical examiner incorrectly recorded the applicant's answers or because the insured was unable to read or neglected to read the policy." This was not true before the passage of § 58. See Sternaman *v.* Metropolitan Life Ins. Co. (1902), 170 *N. Y.* 13. See further, *infra*, the discussion of estoppel and waiver.

[50] *Supra*, notes 3, 4, 7 & 8. See also Pac. Mut. Life Ins. Co. *v.* Van Fleet (1910), 47 *Col.* 401; Rowley *v.* Empire Ins. Co. (1867), 36 *N. Y.* 550; Hayes *v.* Automobile Ins. Exchange (1923), 126 *Wash.* 487. Rhode Island seems to be an exception. Maxwell, Warren, "Waiver of or Estoppel to

> Notice.—No agent or other person except the President, Vice-President, a Second Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits or accepting any representations or information not contained in the written application for this Policy, or to make or modify this contract, or to extend the time of payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements.

Nature of Estoppel and Waiver.

By the doctrine of parol waivers, where an action is brought upon the policy, the insured is permitted by oral testimony to show that the understanding of the parties at the time of making the contract was radically different from that expressed therein.[53] The doctrine of estoppel and waiver, as applied to insurance contracts, arose out of a general ruling of the courts to the effect that although a policy contain a provision rendering it void under certain conditions, yet it is only voidable for such causes, and the company must act within a reasonable time after obtaining knowledge of the true facts in order to sustain a forfeiture.[54]

Assert a Forfeiture for Breach of Condition in an Insurance Contract Because of Knowledge of the Facts in Possession of the Company's Agent as Affected by the Parol Evidence Rule," *P. A. L. I. C.* (1925-27), p. 273.

[51] *Supra,* note 13.

[52] Appendix X. See also *supra,* n. 4.

[53] Richards, George, "Fundamentals in the Law of Insurance and Why Adopted," Address before *Ins. Soc. N. Y.* (1917), p. 13.

[54] Deitch, G. A., "The Doctrine of Election," *P. A. L. I. C.* (1913-21), paper 19, p. 1. The most general cases in which estoppel and waiver arose were: "*First.* Estoppel by knowledge of agent; or *Second.* By collecting the premium after knowledge by the agent; or *Third.* By some other act showing intention to treat the policy as in force, as by requiring proof of death or of loss, thus putting the beneficiary or insured to trouble and expense or by some other equally positive action on the part of the company."

Estoppel and Waiver Distinguished.

The terms *estoppel* and *waiver* "are often used interchangeably, as if they were convertible terms meaning the same thing. But such is not the case, and a failure to observe this clear distinction between them often leads to confusion." [55] Estoppel has been explained thus: [56]

> In most state courts, if the agent of the insurer misrepresents existing or past facts, or if the insurer knows the facts which it may plead as a forfeiture, but nevertheless issues to the insured a policy which is represented as valid, the insurer is estopped from setting up the forfeiture. . . . Estoppel, therefore, involves the element of deceit and is tortious in its basis. In order to be effective, the misrepresentation must relate to a present or past fact and must have the effect of inducing the insured to act in reliance upon it to his prejudice.

Waiver, on the other hand, is the "voluntary relinquishment of a known right." [57] It "is effected by any words that express, or acts that clearly imply, an intention to give up the power to rescind the contract or the privilege of asserting a known defense to an action brought thereon." [58]

Rule Respecting Waiver.

With respect to waiver there is no conflict in the decisions of the federal and state courts. A subsequent waiver of written conditions may always be shown by parol testimony on the ground that parties to a contract may alter or even annul a contract by subsequent agreement or conduct.[59]

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[55] Sovereign Camp, W. O. W. *v.* Richardson (1922; *Ark.* Supreme Ct.), 236 S. W. 278, 279. See also Maxwell, *opus cit.*, p. 263. "A distinction must be made . . . between parol negotiations preceding the execution of the contract and tending to render inoperative policy provisions subsequently to be performed, parol negotiations made subsequent to the execution of the contract and tending thereafter to nullify some of its provisions, and parol negotiations made simultaneously with the making of the contract."

[56] "Insurance—Waiver and Estoppel" (1922), 31 *Yale L. J.* 778.

[57] *Ibid.*

[58] Vance, *opus cit.*, p. 469, § 132. The terms have been thus distinguished in Sovereign Camp, W. O. W. *v.* Putnam (1918; *Tex.* Ct. Civ. App.), 206 S. W. 970, 972: "Waiver is the voluntary surrender of a right; estoppel is the inhibition to assert it from the mischief that has followed. Waiver involves both knowledge and intention; an estoppel may arise where there is no intent to mislead. . . . Waiver involves the acts and conduct of only one of the parties; estoppel involves the conduct of both. A waiver does not necessarily imply that one has been misled to his prejudice, or into an altered position; an estoppel always involves this element. . . . Estoppel arises where, by the fault of one party, another has been induced, ignorantly or innocently, to change his position for the worse in such manner that it would operate as a virtual fraud upon him to allow the party by whom he has been misled to assert the right in controversy."

Rule Respecting Estoppel.

1. *Majority Rule.*

(a) In General.

With respect to estoppel there is a sharp conflict between the great majority of the state courts and those of the United States, but verbal testimony is permitted in most of the jurisdictions. It is not necessary for a contract of insurance to be in writing, unless otherwise provided by statute or regulation.[60] As a matter of fact, contracts were made orally as early as the fourteenth century.[61] At the present time the majority of the courts permit parol evidence to modify the written terms of the contract, although this is "utterly at variance with common law doctrines of evidence." [62] Various factors have influenced courts in adopting such a rule. They have considered, for example, that the policy is long, involved, and technical; that it is a contract of adhesion; [63] that it is frequently unread or misunderstood; and that the insured relies primarily on the statements of the agent at the time negotiations are in progress.[64]

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[59] Maxwell, *opus cit.,* p. 264. Batchelder *v.* Queen Ins. Co. (1883), 135 *Mass.* 449, 450. "A breach of condition, happening after a policy is issued, may be waived, no doubt; . . ." Insurance Co. *v.* Norton (1877), 96 U. S. 234: "An insurance company may waive any condition of a policy inserted therein for its benefit. . . . As a company may at any time, at its option, give authority to its agents to make agreements, or to waive forfeitures, it is not bound to act upon the declaration in its policy that they have no such auhority." See also Insurance Co. *v.* Eggleston (1877), 96 *U. S.* 572; Moran, W. J., "Some Observations Regarding the Subject of 'Waiver' Applied in Actions to Recover Upon Life Contracts," *P. A. L. I. C.* (1913-21), paper 40; Vance, *opus cit.,* p. 497, § 136.

[60] "If parties could not be made secure until all the formal documents were executed and delivered . . . the beneficial effect of this benign contract of insurance would often be defeated and rendered unavailable." Aetna Ins. Co. *v.* Licking Valley Milling Co. (1927; C. C. A. 6), 19 *F.* (2d) 177, 180, quoting Eames *v.* Home Ins. Co., 94 *U. S.* 621.

[61] Holdsworth, W. S., "The Early History of the Contract of Insurance," (1917), 17 *Col. L. R.* 91.

[62] Richards, *opus cit.,* p. 13.

[63] *Supra,* ch. 4, n. 52.

[64] *Supra,* ch. 4, general rules underlying the construction of life policies.

(b) Failure to Read Policy.

The rule of general contract law that parties to a written contract are presumed to have knowledge of its contents and, in the absence of fraud or mutual mistake, are bound thereby, is not rigidly applied to insurance contracts.[65] Courts recognize that policies are usually accepted by the insured[66] without knowledge of their provisions, and failure to read a policy is not negligence as a matter of law.[67] Nor does the insured's acceptance and retention of the policy unread constitute such laches as will void the contract.[68] This rule has also been applied where the applicant signed the application without reading it, and kept the policy with the application attached.[69] The reasoning of the courts is well illustrated in the case of Pfiester *v.* The Missouri State Life Insurance Company.[70] After pointing out that there are two principal lines of decisions relating to estoppel, one governed by the maxim caveat emptor, *vigilantibus et non dormientibus jura subveniunt,* and resting on the assumption that a policy is a contract of bargain and sale with both parties on an equal footing, Justice Burch continued:

> The other principal theory of the formation of the insurance contract is based upon facts. Everybody knows what the facts are. The insurance company sends out its agents for the purpose of procuring insurance. They

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[65] Vance, *opus cit.,* p. 214.

[66] There is evidence that brokers and even underwriters were equally remiss at one time. Weskett, John, *A Complete Digest of the Theory, Laws, and Practice of Insurance,* Dublin (1783), p. X: "Neither would it be short of Truth to intimate, that there have been some considerable Underwriters, as well as Brokers, who were totally ignorant of the true *Import* and *Effect* even of some of the common, printed *Terms* in *Policies* of Insurance; nay, who never read a Policy throughout in their Life;—as many Persons pass for very good Christians, who never perused a single Epistle, or Gospel in the Liturgy."

[67] Hould *v.* The Maryland Cas. Co. (1929), 83 *N. H.* 474.

[68] Vance, *opus cit.,* p. 214.

[69] Michigan Mut. Life Ins. Co. *v.* Leon (1894), 138 *Ind.* 636.

[70] (1911), 85 *Kan.* 97, 101. Quoted and upheld in The Kansas Amusement Co. *v.* The Maryland Cas. Co. (1927), 122 *Kan.* 800. So in Lundman *v.* U. S. F. & G. Co. (1925), 163 *Minn.* 303, 307: "This court, however, does not go to the extent of the Federal court, viz., that failure to read the policy bars reformation, for . . . the common practice of the insured not to read the many terms and conditions, some applicable and many more without application to the particular risk covered in the lengthy policies, is taken into consideration." See also Murphey *v.* Liverpool & London & Globe Ins. Co. (1923), 89 *Okla.* 207; Gregerson *v.* Phenix Fire Ins. Co. (1918), 99 *Wash.* 639.

are usually experts in the business and are frequently paid large bonuses for securing extra large volumes of insurance. Few persons solicited to take policies understand the subject of insurance or the rules of law governing the negotiations, and they have no voice in dictating the terms of what is called the contract. They are clear upon two or three points which the agent promises to protect, and for everything else they must sign ready-made applications and accept ready-made policies carefully concocted to conserve the interests of the company. The agent in fact prepares the contract when he writes the application, because the policy, which the applicant does not see until delivered and does not sign, follows an acceptance of the application as a matter of course. In writing the application the agent does what the company sent him out to do. He negotiates for the company, asks questions for the company, writes down answers for the company, and makes the return for the company. It is not carelessness or imprudence in fact, as people in general understand those terms, for the applicant to take it for granted that the agent will accurately and truthfully set down the result of the negotiations. If he fail to do so good sense and common justice regard the company as responsible and not the insurer. The subject, therefore, is *sui generis,* and the rules of a legal system devised to govern the formation of ordinary contracts between man and man can not be mechanically applied to it.

2. *Statement of Majority Rule.*

It may be stated then, as the rule in the majority of state jurisdictions, that where a company delivers an apparently valid contract, and receives the premium for it, its agent having knowledge at the time of a breach of the conditions set forth, or having filled out an incorrect application, either fraudulently or negligently, then in such case the company will be presumed to have waived the forfeiture, which fact may be established by parol testimony.[71] As stated by Justice Ladd:[72]

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[71] *Supra,* notes 54-57. See also People's Fire Ins. Ass'n *v.* Goyne (1906), 79 *Ark.* 315, 326; Kausal *v.* Minnesota Farmers' Mut. Fire Ins. Ass'n (1883), 31 *Minn.* 17, 23; McCarty *v.* N. Y. Life Ins. Co. (1898), 74 *Minn.* 530. In this case the agent had misrepresented the terms of a policy. The court held, "that the fraudulent representations constituted a ground for recission, although the policy provided that no statements, promises or information made or given by the person soliciting or taking the application for a policy should bind the company, or affect its right, unless reduced to writing and presented in the application to the offices of the company at the home office." See further N. Y. Life Ins. Co. *v.* Fukushima (1923), 74 *Col.* 236, 239; Maxwell, *opus* cit., p. 271.

[72] Gurnett *v.* Atlas Mut. Ins. Co. (1904), 124 *Iowa* 547, 549.

> The law is charitable enough to assume, in the absence of any showing to the contrary, that an insurance company intends to execute a valid contract in return for the premium received; and when the policy contains a condition which renders it void at its inception, and this result is known to the insurer, it will be presumed to have intended to waive the condition, and to execute a binding contract, rather than to have deceived the insured into thinking his property is insured when it is not, and to have taken his money without consideration.

But where the insured has not acted in good faith, or has supplied false and fraudulent information in his application, or where there is collusion between him and the agent, practically without exception the company is released from liability.[73]

3. *Minority Rule.—United States, Massachusetts, New Jersey, England.*

(a) In General.

The courts which have adopted the minority rule comprise those of the United States, Massachusetts, and New Jersey.[74] England leans to this position with less certainty.[75] In certain respects Colorado, Connecticut, Maryland, and Rhode Island may also be considered in this group.[76] The position of New York is somewhat uncertain.

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[73] Hayes *v.* Automobile Ins. Exchange (1923), 126 *Wash.* 487; Maxwell, *opus cit.*, p. 271.

[74] Dewees *v.* The Manhattan Ins. Co. (1872), 35 *N. J.* L. 366: "The written agreement cannot be controlled by parol evidence to the effect that a different understanding existed."

[75] Vance, *opus cit.*, p. 509, note 89. In the recent case of Newsholme Brothers *v.* Road Transport and Gen. Ins. Co., Ltd. [1929], 2 K. B. (*Eng.*) 356 (C. A.), a very detailed case giving the history of previous cases, it was held by Greer, L. J., p. 379: "Once a contract is reduced into writing, the writing alone can be looked at as containing the terms of the contract. Anything said during the negotiations ceases to have any legal validity."

[76] In the first three states, the insured is considered negligent in having signed the application without having read it. Maxwell, *opus cit.*, p. 273; Eagle, Star and British Dom. Ins. Co., Ltd. *v.* Main (1922), 140 *Md.* 220. In Rhode Island the agent is considered as the agent of the insured. Maxwell, *opus cit.*, p. 273. The same rule is apparently held by the English courts. By Scrutton, L. J.: "I have great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue, and a promise that they are true, and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill it up for him is the agent of the person to whom the proposal is addressed." Newsholme Brothers *v.* Road Transport and Gen. Ins. Co., Ltd. [1929], 2 K. B. (*Eng.*) 356, 376. (C. A.)

(b) United States.

The United States Supreme Court definitely accepted the minority doctrine in the case of Northern Assurance Company *v.* Grand View Building Association,[77] a case which has been criticized [78] and referred to as a "remarkable and conspicuous judicial somersault." [79] Prior to this, the rule had apparently been fixed in the case of Insurance Company *v.* Wilkinson,[80] in which Justice Miller decided that while the case does not deny the rule of parol evidence, "it goes upon the idea that the writing offered in evidence was not the instrument of the party whose name is signed to it; that it was procured under such circumstances by the other side as estops that side from using it or relying upon its contents . . ."

In 1886 the court seemingly reversed itself in the case of New York Life Insurance Company *v.* Fletcher,[81] yet on the very day on which the Northern Assurance case was argued,[82] the court handed down the decision of McMaster *v.* New York Life Insurance Company.[83]

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[77] (1902), 183 *U. S.* 308.

[78] Maxwell, *opus cit.,* p. 269.

[79] Vance, *opus cit.,* p. 502.

[80] (1871), 13 Wall. (*U. S.*) 222, 236. See also *supra,* Agency. See further Insurance Co. *v.* Norton (1877), 96 *U. S.* 234; Insurance Co. *v.* Eggleston (1877), 96 *U. S.* 572.

[81] (1886), 117 *U. S.* 519, 529. By Mr. Justice Field: "It would introduce great uncertainty in all business transactions, if a party making written proposals for a contract, with representations to induce its execution, should be allowed to show, after it had been obtained, that he did not know the contents of his proposals, and to enforce it, notwithstanding their falsity as to matters essential to its obligation and validity. Contracts could not be made, or business fairly conducted, if such a rule should prevail; and there is no reason why it should be applied merely to contracts of insurance. There is nothing in their nature which distinguishes them in this particular from others." The case has been criticized as a distortion of a useful principle of law because of disbelief in the innocence of the policy-holder. Vance, *opus cit.,* p. 453, note 4.

[82] October 28, 1901.

[83] (October 28, 1901), 183 *U. S.* 25. The facts were that the company dated the policy as of December 12, 1893, at the request of the agent, although the latter told the insured it would be dated from December 18. The company contended that the policy was void for failure to pay the renewal premium within thirteen months of December 12. By Mr. Chief Justice Fuller: "The situation being thus we are unable to concur in the view that McMaster's omission to read the policies, when delivered to him and payment of the premiums made, constituted such negligence as to estop plaintiff from denying that McMaster by accepting the policies that the insurance might be forfeited within thirteen months from December 12, 1893." This case is very infrequently cited. See also Burke *v.* Dulaney (1894), 153 *U. S.* 228.

The Northern Assurance case involved a fire policy which by its terms was void in case of the existence of other insurance without the written consent of the company. It further provided that all waivers were to be in writing, and that agents were without authority otherwise to waive any policy provision. Other insurance, of which the agent was aware, existed, but the policy was not endorsed to that effect. The Supreme Court held that parol testimony could not be admitted to change the terms of the written instrument. After reviewing all the principal cases, the court ruled, by Mr. Justice Shiras:[84]

> That contracts in writing, if in unambiguous terms, must be permitted to speak for themselves, and cannot by the courts, at the instance of one of the parties, be altered or contradicted by parol evidence, unless in case of fraud or mutual mistake of facts; that this principle is applicable to cases of insurance contracts as fully as to contracts on other subjects; . . . that it is competent and reasonable for insurance companies to make it matter of condition in their policies that their agents shall not be deemed to have authority to alter or contradict the express terms of the policies as executed and delivered; that where fire insurance policies contain provisions whereby agents, by writing endorsed upon the policy or by writing attached thereto, express the company's assent to other insurance, such limited grant of authority is the measure of the agent's power in the matter, and where such limitation is expressed in the policy, executed and accepted, the insured is presumed, as matter of law, to be aware of such limitation.

The reasons given for the above rule were in part as follows:[85]

> The only way to avoid the defense and escape from the operation of the conditions, is to hold that it is not competent for fire insurance companies to

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[84] Northern Assurance Co. *v.* Grand View Building Ass'n (1902), 183 U. S. 308, 361.

[85] *Ibid.*, pp. 363, 364. Compare this with the statement of Mr. Justice Miller in Insurance Co. *v.* Wilkinson (1871), 13 Wall. (*U. S.*), 222, 231. Referring to the parol evidence rule, he states: "But experience has shown that in reference to these matters the rule is not perfect. The written instrument does not always represent the intention of both parties, and sometimes it fails to do so as to either; and where this has been the result of accident, or mistake, or fraud," the principle of reformation is recognized. "A rule of evidence adopted by the courts as a protection against fraud and false swearing, would, as was said in regard to the analogous rule known as the statute of frauds become the instrument of the very fraud it was intended to prevent, if there did not exist some authority to correct the universality of its application."

> protect themselves by conditions of the kind contained in this policy. So to hold would, as we have seen, entirely subvert well-settled principles declared in the leading English and American cases, and particularly in those of this court. This case is an illustration of the confusion and uncertainty which would be occasioned by permitting the introduction of parol evidence to modify written contracts. . . . It should not escape observation that preserving written contracts from change or alteration by verbal testimony of what took place prior to and at the time the parties put their agreements into that form, is for the benefit of both parties. It would be very unfortunate if prudent men should be deterred from investing capital in such companies [fire insurance] by having reason to fear that conditions which have been found reasonable and necessary to put into policies to protect the companies from faithless agents and from dishonest insurers, are liable to be nullified by verdicts based on verbal testimony.

It is interesting to note that after the decision by the court to the effect that the company was not liable, the case came before the Supreme Court of Nebraska, which court found sufficient evidence to reform the contract by adding an endorsement permitting other insurance, and held that an equity suit might be brought after an unsuccessful law suit.[86] This decision was upheld by the United States Supreme Court.[87]

In upholding the attitude of the Supreme Court, one authority comments as follows: [88]

> Invoking this doctrine of parol waivers, however, claimants, and especially unscrupulous claimants, sweep out of our policies, both fire and life, all the

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[86] Grand View Building Ass'n *v.* Northern Assur. Co. of London (1905; *Neb.* Supreme Ct.), 102 N. W. 246.

[87] Northern Assur. Co. of London *v.* Grand View Building Ass'n (1906), 203 *U. S.* 106, 107. Mr. Justice Holmes: "Whether sufficient grounds were shown for the relief which was granted is a matter with which we have nothing to do. But the state court was right in its answer to the question before us. The former decision of course is not an adjudication that the contract cannot be reformed. It was rendered in an action at law, and only decided that the contract could not be recovered upon as it stood, or be helped out by any doctrine of the common law." See Lumber Underwriters of N. Y. *v.* Rife (1915), 237 *U. S.* 605, 610: "Of course if the insured can prove that he made a different contract from that expressed in the writing he may have it reformed in equity." See further Mutual Life Ins. Co. of N. Y. *v.* Hilton-Green (1916), 241 *U. S.* 613; and the recent case of Stipcich *v.* Metropolitan Life Ins. Co. (1928), 277 *U. S.* 311, in which there seems to be a leaning away from the established rule.

[88] Richards, *opus cit.,* p. 14.

conditions and warranties though inserted therein by legislative enactment, and this is done without the payment of any additional premium. To try the issue before a jury seems to be almost farcical. If the contract as written does not need reforming, it should be enforced as it reads. If it does need reforming, the issue should, in my opinion, be determined, as in all other cases, by a judge sitting in equity, and under the rules of evidence peculiar to that procedure.

(c) Massachusetts.

As previously stated the Massachusetts courts also hold that parol testimony is inadmissible. In a case in which apparently no attention was paid to the Wilkinson decision, the court held:[89]

> However the law may be elsewhere, it is settled the other way in Massachusetts. A breach of condition, happening after a policy is issued, may be waived, no doubt; but when the breach exists at the moment when, if ever, the contract comes into existence, it must be waived at that moment, if ever, and at that very instant the writing purports to establish and insist upon the condition. We must follow the decisions that parol evidence of such a waiver as is relied on in this case would contradict the written instrument upon which the suit is brought.

(d) New York.

(i) In General.

The position of the New York courts is uncertain.[90] As early as 1875 they decided that the policy "embodies the contract, and must speak for itself," even though the agent who "procured the insurance for the company knew the true state of the facts." [91] Later cases held to the opposite view.[92] With respect to policies other than life, New York may probably be classified with the majority of the jurisdictions.[93]

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[89] Batchelder *v.* Queen Ins. Co. (1883), 135 *Mass.* 449, 450. See also Fitchburg Savings Bank *v.* Amazon Ins. Co. (1878), 125 *Mass.* 431.

[90] Vance, *opus cit.,* p. 510, note 91.

[91] Foot *v.* Aetna Life Ins. Co. (1875), 61 *N. Y.* 571, 576.

[92] Grattan *v.* The Metropolitan Life Ins. Co. (1880), 80 *N. Y.* 281; Forward *v.* The Continental Ins. Co. (1894), 142 *N. Y.* 382.

[93] See the two interesting cases, Satz *v.* Mass. Bond. & Ins. Co. (1926), 243 *N. Y.* 385; and Hubbard *v.* Ohio Farmers' Ins. Co. (1928), 229 *N. Y. S.* 678.

(ii) Life Insurance.

There is no doubt of the rule in New York respecting life insurance. The courts have held that section 58 of the insurance law, effective January 1, 1907, prohibits the admission of parol evidence, although such evidence was admissible prior to that time.[94]

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[94] *Supra,* note 41. See also Archer *v.* Equitable Life Assur. Soc. of the U. S. (1916), 218 *N. Y.* 18; Grubiak *v.* John Hancock Mut. Life Ins. Co. (1925), 208 *N. Y.* S. 279; Kwiatkowski *v.* Brotherhood of American Yeomen (1926), 243 *N. Y.* 394; Minsker *v.* John Hancock Mut. Life Ins. Co. (1930; *N. Y.* Ct. App.) 173 N. E. 4.

CHAPTER VII

WRITING OF THE POLICY (*Continued*)

Concealment

The question of concealment and misrepresentation is one which has always been of extreme importance to both parties of the insurance contract. Because of the early importance and prior use of marine insurance the cases which shaped these doctrines were usually concerned with marine, rather than with life or fire insurance.[1] At the present time there is no doubt that the insured rather than the underwriter requires the protection of the legislatures and courts, but such was not always the case.[2] The early cases involving the question of concealment were decided on the ground that insurance contracts were based upon chance,[3] that they were speculations in the nature of bets,[4] and for this reason all the facts had to be known by each party to the contract. The doctrine was well set forth by Lord Mansfield in a case dealing with the insurance of a fort in Sumatra against capture by a foreign enemy:[5]

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[1] Early treatises on insurance law were devoted almost exclusively to marine cases. See, for example, Marshall, Samuel, *A Treatise on the Law of Insurance,* 1st Am., from the Eng. Ed., Boston (1805). In the preface, he states, p. viii: "Insurance upon Lives, and Insurance against Fire, are now become very important contracts in this country." But a glance at the table of contents shows that of some seven hundred pages, life and fire together total less than fifty pages. The first case dealing with life insurance was that of Lord *v.* Dall, 12 *Mass.* 115, decided in March, 1815. The United States Digest, published in 1846, contained only this case, "though the Reports show four other cases decided prior to 1850." Bliss, George, *The Law of Life Insurance,* N. Y., 2d Ed. (1874), p. iv. See also p. v.

[2] Richards, George, "Fundamentals in the Law of Insurance and Why Adopted," Address before *Ins. Soc. N. Y.* (1917), p. 4. In referring to early policies, the author states: "The conventional form of the marine insurance contract in common use was simple and one-sided, one-sided in favor of the insured. The only express obligation resting upon him was the duty to pay the premium." See also the interesting passage in Malynes, Gerard, *Consvetvdo, Vel Lex Mercatoria or The Antient Law-Merchant,* London (1636), p. 107: "And herein must be noted, that Assurors are very fitly compared vnto Orphans, because they may endure much wrong, but cannot commit any; for they are to bee ordered and commanded by the commissioners sentence, and must performe the same; to which end the Lord Maior of London (for the time being) hath authoritie to commit them to prison, if in case they do not satisfie the same within a time limited vntill they doe it."

[3] Seaman *v.* Fonereau (1742), 2 Strange (*Eng.*) 1183: "And the Chief justice was of that opinion, and declared, that as these are contracts upon chance, each party ought to know all these circumstances. And he thought it not material, that the loss was not suich an one as the letter imported; for these things are to be considered in the situation of them at the time of the contract, and not to be judged by any subsequent events; . . ."

> The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the *insured* only: the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist.
>
> The keeping back such circumstance is a *fraud,* and therefore the policy is *void.* Although the suppression should happen through *mistake,* without any fraudulent intention; yet still the under-writer is *deceived,* and the policy is *void;* because the risque run is really different from the risque understood and intended to be run, at the time of agreement.

Although the policy contained no reference to concealment, it was interpreted by the courts as an implied condition[6] upon which the validity of the contract depended. The doctrine was thus a departure from two well-established common law principles: first, that of *caveat emptor,* "governing the ordinary contract of sale when unaccompanied by express guaranty," and, second, that "the contract as written is presumed to embrace the entire agreement, and, if without ambiguity in its phraseology, is the sole admissible evidence of the agreement."[7]

Contracts of life insurance have always been regarded by the courts as involving the utmost good faith.[8] The principle was recognized as early as 1758, in the case of Cleeve *v.* Sir Crisp Gascoigne.[9] Insurance had been procured upon the life of one Poulton by Sir Crisp Gascoigne. Relying upon the statement of the latter that Poulton lived a great distance in the country and was not available for inspection, but that he was "a good life," the underwriters accepted the risk. Poulton was "a drunken fellow" and died six months later. Said the Lord-keeper:

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[4] Richards, *opus cit.,* p. 6. "What is naturally unknown to both parties need not be ferreted out and disclosed by either, since the unknown enters into the chance which is to be assumed. If the underwriter, through some private channel, is informed that the proposed adventure is already ended, it would manifestly be a fraud for him to accept a premium for insuring it. No chance remains. If the owner is advised that his ship or cargo is already in peculiar peril, or in any way impaired, and does not say so, the chance to him is one thing, and, to the underwriter, another thing."

[5] Carter *v.* Boehm (1766), 3 Burrows (*Eng.*) 1905, 1909.

[6] Other implied conditions in marine insurance are that general average contributions are covered by the policy, and that "if the insurance is short of value, the insured is co-insurer for the deficiency." Richards, *opus cit.,* p. 7.

[7] *Ibid.*

[8] *Supra,* ch. 4, nature of the life policy.

> I have constantly attended at Guild-hall during the last war, and was concerned in various cases of this nature; and by all the foreign books, as well as our own, the learning concerning insurances, as well of lives as of ships, was thoroughly settled and established: "every party concerned in an insurance must communicate every circumstance he knows, in order to ascertain the premium; which otherwise will be affected, and the policy void" . . . I should not sit here were I to suffer a man to receive a sum of money, and keep it without making any satisfaction for the detention: What would the merchants of Lombard Street think of such proceedings?

The Effect of a Change in Conditions After the Application Has Been Made.

So, too, where conditions material to the risk change between the opening of negotiations for insurance and the issuance of the policy, such changes must be disclosed to the insurer, under penalty of forfeiture.[10] But the insured need not communicate to the underwriters, facts material to the risk insured against which come to his knowledge after the contract has been made.[11]

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[9] In Chan., April the 15th, 1758; reported in Weskett, John, *A Complete Digest of the Theory, Laws, and Practice of Insurance,* Dublin (1783), p. 333.

[10] Stipcich *v.* Metropolitan Life Ins. Co. (1928), 277 *U. S.* 311, 317, citing Grieve *v.* Young (Ct. of Session, 1782) and Fitzherbert *v.* Mather, 1 T. R. 12. See also Cummings *v.* Conn. Gen. Life Ins. Co. (1928), 101 *Vt.* 73, 88: "So, also, in the interval between the medical examination and the execution and delivery of the policy, a serious change in the health of the assured may have occurred, of which the insurer might be, and probably would be, wholly ignorant. The insurer has therefore a right to rely upon the utmost good faith upon the part of the assured, and though the latter may not be bound to communicate, if uninquired of, all the details of his life which might affect the judgment of the insurer with respect to the assumption of the risk, he is certainly bound to disclose any impending peril to life not known to the insurer, and to which the latter cannot reasonably be said to be put upon inquiry." (Quoting Cable *v.* U. S. Life Ins. Co., 11 *F.* 19, 27.

[11] Stipcich *v.* Metropolitan Life Ins. Co. (1928), 277 *U. S.* 311, 315; Cory *v.* Patton (1874), L. R. 9 Q. B. (*Eng.*) 577.

Development.

1. *In England.*

In England the doctrine of concealment still applies with equal force to all branches of insurance. The presence or absence of corrupt intent on the part of the insured is immaterial.[12]

2. *In the United States.*

(a) Early Rule.

The United States courts adopted the rule pertaining to concealment as laid down in England.[13] As a matter of fact, the first life insurance case involved, among other questions, this issue.[14] At first no distinction was made among the various types of insurance,[15] but courts soon began to recognize that a rule different from that applying to marine policies should be established for those of fire and life.[16] The reasons were thus indicated by Justice Ranney in a case dealing with a fire policy:[17]

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[12] Vance, W. R., *Handbook of the Law of Insurance,* West Pub. Co., St. Paul, 2d Ed. (1930), p. 339, § 96. See also Bufe *v.* Turner (1815), 6 Taunt. (*Eng.*) 388; Morrison *v.* Muspratt (1827), 4 Bing. (*Eng.*) 60; Lindenau *v.* Desborough (1828), 8 B. & C. (*Eng.*) 586, 592. This case concerned an insurance on the life of the Duke of Saxe Gotha, in which the underwriters were not informed of his loss of speech and mental faculties. By Bayley, J.: "I think that in all cases of insurance, whether on ships, houses, or lives, the underwriter should be informed of every material circumstance within the knowledge of the assured; and that the proper question is, Whether any particular circumstance was in fact material? and not whether the party believed it to be so. The contrary doctrine would lead to frequent suppression of information." See further Proudfoot *v.* Montefiore (1867), L. R. 2 Q. B. (*Eng.*) 511, 521. By Cockburn, C. J.: " . . . if an agent, whose duty it is, in the ordinary course of business, to communicate information to his principal as to the state of a ship and cargo, omits to discharge such duty, and the owner, in the absence of information as to any fact material to be communicated to the underwriter, effects an insurance, such insurance will be void, on the ground of concealment or misrepresentation."

[13] McLanahan *v.* Universal Ins. Co. (1828), 1 Pet. (*U. S.*) 170, 185. By Justice Story: "The underwriter must be presumed to act upon the belief, that the party procuring insurance, is not, at the time, in possession of any facts, material to the risk, which he does not disclose; . . . This doctrine is supported by the English as well as the American authorities, and particularly by Watson *v.* Delafield (1 Johns. 152; 2 Caines 224; 2 Johns. 526), where most of the early cases are collected, and commented upon, . . . "

[14] Lord *v.* Dall (1815), 12 *Mass.* 115. Since this is the first case, it is interesting to note briefly the facts. Jabez Lord insured his life for $5000, at a premium of 7 per cent, in favor of his sister, under a policy which ran from December 16, 1809, at noon, to July 16, 1810, at noon. Lord sailed as supercargo on a ship whose mission was to procure slaves. He died off the coast of Africa "before the expiration of the time for which his life was insured, and not from any of the causes excepted from the risk." Dall, an underwriter to the extent of $500, objected on three counts: 1. That Nancy Lord had no insurable interest; 2. "That there was a concealment of the intention of the said Jabez to go to Africa"; and, 3. That the policy was void, "it being to secure the life of the said Jabez while in the execution of an unlawful enterprise." The court decided against the underwriter on

> Fire insurance sprung up at a later period; and the courts finding a system of rules already constructed for marine risks, at once transferred them to this new species of insurance.
>
> Almost all the diversity of opinion to be found in the later cases has resulted from a growing conviction with most courts, that a substantial difference exists in the nature and essential elements of the contract of marine and fire insurance, which renders some of these rules inapplicable to the latter, and from disinclination with others to depart from the strict rules applied to marine insurance.

The question with respect to life insurance was very thoroughly reviewed by Judge Taft in his scholarly decision of the case of Penn Mutual Life Insurance Company *v.* Mechanics' Savings Bank and

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each count, ruling as to concealment, that "the present plaintiff, being ignorant of any intended violation of the law, ought not to be affected by such illegality" (even if it existed, which was not shown). The court further remarked: "A policy made for the purpose of enabling a man to commit crimes would undoubtedly be void. But one honestly made would seem not to be affected by the moral conduct of the party who had procured it."

[15] Vose *v.* Eagle Life & Health Ins. Co. (1850), 6 Cush. (*Mass.*) 42, 48. By Fletcher, J.: " . . . an untrue allegation of a material fact, or, a concealment of a material fact, will void the policy, though such allegation or concealment be the result of accident or negligence and not of design. It is the duty of the insured to disclose all material facts within his knowledge. Although specific questions applicable to all men are proposed by the insurers, yet there may be particular circumstances affecting the individual to be insured, which are not likely to be known to the insurers; and the concealment of a material fact, when a general question is put by the insurers, at the time of effecting the policy, which would elicit that fact, will vitiate the policy."

[16] But with respect to marine insurance the old doctrine is still held. "The relationship between insurer and insured in marine insurance is one which calls for uberrima fides. The applicant is required to disclose to the underwriter all known facts material to the risk." Merchants' & Shippers' Ins. Co. *v.* St. Paul Fire & Marine Ins. Co. (1927), 220 *N. Y. S.* 514, 517. See also Penn Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co. (1896; C. C. A.), 72 *F.* 413, 434.

[17] Hartford Protection Ins. Co. *v.* Harmer (1853), 2 *Ohio* St. 452, 463. It was decided that the doctrine of concealment as understood in marine insurance was not entirely applicable to fire insurance, "in which the insured is not bound to communicate every fact material to the risk."

Trust Company.[18] The court recognized that "the very marked difference between the situation of the parties in marine insurance and that of the parties to a fire or life policy has led many courts of this country to modify the rigor of the doctrine in its application to fire and life insurance . . ."; [19] and that in marine insurance, since the object of insurance is at a distance on the seas, the insurer is at the mercy of the insured, and the latter must give all the facts "and he cannot be permitted to escape the obligation by a plea of inadvertence or negligence." [20] The court further pointed out that in fire and life insurance "the parties stand much more nearly on an equality." [21] "The subject of life insurance is always present for physical examination by medical experts of the insurer," and must answer many questions concerning his health, habits, and family history. Further, "the question of concealment rarely, if ever, arises until after the death of the applicant, and then the mouth of him whose silence and whose knowledge it is claimed avoid the policy is closed. . . . The applicant is likely to trust the judgment of the solicitor as to the materiality of everything not made the subject of express inquiry, and, with the solicitor's strong motive for securing the business, there is danger that facts communicated to him may not find their way into the application." [22] Nor is the insured familiar with customs as is the purchaser of marine policies, since his transactions are limited to but one or a few policies; to enforce the marine doctrine of concealment in respect to life insurance "is to transfer the result of a usage prevailing in one branch of business to another, where the conditions are very different." [23]

(b) Subsequent Modification.

In the United States, therefore, the rule is well settled with respect to life and fire policies that "no failure to disclose a fact material to the risk, not inquired about, will avoid the policy, unless such non-disclosure was with intent to conceal from the insurer a fact believed to be material; that is, unless the non-disclosure was fraudulent." [24]

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[18] (1896; C. C. A.), 72 *F.* 413.

[19] *Ibid.*, p. 434.

[20] *Ibid.*

[21] *Ibid.*

[22] *Ibid.*, p. 435.

[23] *Ibid.*, pp. 436, 437.

[24] *Ibid.*, pp. 434, 441. See also Vance, "Handbook," *opus cit.*, p. 343.

In life insurance where it is common to require answers to numerous questions, when the latter are fully and truly answered the omission to state facts not called for by any specific or general question, although material to the risk, will not constitute a fraudulent concealment.[25] So also where a question is imperfectly answered, or left blank, and a policy is issued without further inquiry, the company waives the want or imperfection in the answer, and the omission to answer more fully is immaterial.[26] But the omission must not transcend the bounds of good faith.[27]

Test of Materiality.

The test of the materiality of a fact concealed is whether its knowledge by the underwriter would have influenced him in accepting or rejecting the risk. "Every fact is material which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium." [28] To be material, it need not increase the risk, or contribute to the loss.[29] It is sufficient if the parties to the contract would have been influenced by its knowledge.[30] Whether the fact concealed is material and should have been communicated is a question for the jury.[31]

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[25] Rawls *v.* American Mut. Life Ins. Co. (1863), 27 *N. Y.* 282; Stipcich *v.* Metropolitan Life Ins. Co. (1928), 277 *U. S.* 311.

[26] Phoenix Life Ins. Co. *v.* Raddin (1887), 120 *U. S.* 183, 190

[27] "The nature of this contract, the insurance of a man's life, the perfect familiarity of the man himself with the condition of the subject-matter, his own life, the ignorance of the insurance company in regard to it, and its necessary reliance in making the contract upon his good faith, honesty and truthfulness, impose upon him the duty of disclosing to the company every fact material to the risk which comes to his knowledge at any time before the contract is finally closed. An intentional omission to discharge that duty perpetrates a plain fraud upon the company, which necessarily avoids the contract." (Quoting Equitable Life Assur. Co. *v.* McElroy, 83 *F.* 631, 636.) See also Mutual Life Ins. Co. of N. Y. *v.* Hilton-Green (1916), 241 *U. S.* 613.

[28] Hartman *v.* Keystone Ins. Co. (1853), 21 *Pa.* St. 466, 477.

[29] *Ibid.*: "One who falsely declares himself free from consumption cannot effect a valid insurance on his own life, though he die of cholera. A soldier or a sailor who warrants himself a merchant, has a void policy, even though he is not slain in battle or does not perish at sea. In such cases the whole contract is entirely void, as much as if it had never been made, and of course it cannot derive any force or validity from a subsequent event."

[30] Vance, "Handbook," *opus cit.,* p. 347, § 99.

[31] Elliott *v.* Hamilton Mut. Ins. Co. (1859), 13 Gray (*Mass.*) 139; Levie *v.* Metropolitan Life Ins. Co. (1895), 163 *Mass.* 117; Price *v.* Phoenix Mut. Life Ins. Co. (1871), 17 *Minn.* 497; Huguenin *v.* Rayley (1815), 6 Taunt. (*Eng.*) 186.

Representations

A representation is a statement made to the insurer for the purpose of giving information or inducing him to accept the risk. It may be oral or written, and may be made before or at the time the contract is executed. If written, it "may be found either within the contract or without it." [32] A material false representation, whether innocent or fraudulent, is a ground for the avoidance of an insurance policy the same as any other contract.[33] Such a representation may be designated as a misrepresentation, which "is the statement of something as a fact which is untrue in fact, and which the assured states, knowing it to be untrue, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk." [34] Immaterial representations, unless provided otherwise by statute, are wholly without effect.[35]

Promissory and Affirmative Representations.

The word "representations" is generally confined in use to representations of facts existing at the time the contract is made, but it is sometimes "extended to statements made by the assured concerning what is to happen during the term of the insurance; in other words, not to the present, but to the future. . . . Such statements . . . are sometimes called 'promissory representations,' to distinguish them from those relating to facts, or 'affirmative representations.' " [36] Courts will give effect to such promissory representations when they are interpreted as being part of the contract.[37]

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[32] Vance, "Handbook," *opus cit.*, p. 359, § 105.

[33] Vose *v.* Eagle Life & Health Ins. Co. (1850), 6 Cush. (*Mass.*) 42, 48; Grubiak *v.* John Hancock Mut. Life Ins. Co. (1925), 208 *N. Y.* S. 279; Phoenix Life Ins. Co. *v.* Raddin (1887), 120 *U. S.* 183.

[34] Ebner, Adm'r, *v.* Ohio State Life Ins. Co. (1918), 69 *Ind.* App. 32, 55. As to the test of materiality see *supra,* p. 130.

[35] Vance, "Handbook," *opus cit.*, p. 359, § 106. Vivar *v.* Supreme Lodge of Knights of Pythias (1890), 52 *N. J.* L. 455, 467.

[36] Kimball *v.* Aetna Ins. Co. (1865), 9 Allen (*Mass.*) 540, 542.

[37] *Ibid.*

Liberal Construction—Substantial Truth.

As is true of the policy itself, representations are construed liberally in favor of the insured, and need be only substantially correct.[38] Where the falsity of a statement is relied upon as a defense, the burden of proof is upon the insurer, and the materiality of such statement and the intent of the insured to deceive are questions for the jury.[39]

1. *Health.*

In the absence of bad faith, a statement by the insured regarding his health is regarded as true, if it expresses his *bona fide* belief and opinion.[40] The question arose very early in the history of the business, and "the result of the decision impressed upon the Life Offices the importance of seeking more precise information regarding the existence of constitutional diseases in persons proposed for assurance." [41] The action was on a policy "on the life of Sir Simeon Stuart, Bart., from the 1st of April, 1779, to the 1st of April, 1780, and during the life of Eliza Edgly Ewer." The policy contained a warranty that Sir Simeon was in good health on May 11, 1779. It appeared in evidence "that although Sir Simeon was troubled with spasms and cramps from violent fits of gout, he was in as good health, when the policy was underwritten, as he had been for a long time before. It was also proved by the broker who effected the policy that the underwriters were told that Sir Simeon was subject to the gout." [42] The decision contained the very frequently quoted words of Lord Mansfield:

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[38] Ebner, Adm'r, *v.* Ohio State Life Ins. Co. (1918), 69 *Ind.* App. 32, 56; Guaranty Life Ins. Co. *v.* Frumson (1921; *Mo.* Sup. Ct.), 236 S. W. 310; Insurance Co. *v.* Wilkinson (1871), 13 Wall. (*U. S.*) 222; N. Y. Life Ins. Co. *v.* Fletcher (1886), 117 *U. S.* 519; Phoenix Life Ins. Co. *v.* Raddin (1887), 120 *U. S.* 183.

[39] Levie *v.* Metropolitan Life Ins. Co. (1895), 163 *Mass.* 117; Price *v.* Phoenix Mut. Life Ins. Co. (1871), 17 *Minn.* 497; American Bankers' Ins. Co. *v.* Hopkins (1917), 67 *Okla.* 150.

[40] Owen *v.* Metropolitan Life Ins. Co. (1907), 74 *N. J.* L. 770.

[41] Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1886-87), vol. 26, p. 18.

[42] Willis *v.* Poole, Sittings at Guildh. East. Vac. 1780 in 2 *Park on Ins.* 934, 935. As a matter of fact the question had been at issue in a policy dated Oct., 1759. Ross *v.* Bradshaw, 1 W. Bl. (*Eng.*) 312, 2 *Marsh. on Ins.*, 668, 669: "The only question is, whether he was in a *reasonable good state of health, and such a life as ought to be insured on common terms.*"

> The imperfection of language is such that we have not words for every different idea; and the real intention of the parties must be found out by the subject-matter. By the present policy, the life is warranted, to some of the underwriters *in health,* to others *in good health;* and yet there was no difference intended in point of fact. *Such a warranty can never mean that a man has not the seeds of disorder.* We are all born with the seeds of mortality in us. A man, subject to the gout, is a life capable of being insured, if he has no sickness at the time to make it an unequal contract.

The United States courts have adopted the same attitude.[43] "Good health" is a relative term.[44] "It is well settled that mere temporary ailments or affections, not of a serious or dangerous character, which pass away, and are likely to be forgotten, because they leave no trace in the constitution, are not to be regarded as diseases, within the meaning of a life insurance policy." [45] In the leading case of Moulor *v.* American Life Insurance Company,[46] the "main defense was that the insured had been afflicted with scrofula, asthma and consumption prior to the making of his application, and that, in view of his statement that he had never been so afflicted, the policy was by its terms, null and void." [47] The insured declared and warranted that his answers were "fair and true." The opinion of the court, by Mr. Justice Harlan, is in part as follows: [48]

> In the absence of explicit, unequivocal stipulations, requiring such an interpretation, it should not be inferred that a person took a life policy with the distinct understanding that it should be void and all premiums paid thereon forfeited, if at any time in the past, however remote, he was, whether conscious of the fact or not, afflicted with some one of the diseases mentioned in the question to which he was required to make a categorical answer. If those who organize and control life insurance companies wish to exact from the applicant, as a condition precedent to a valid contract, a guaranty against the existence of diseases, of the presence of which in his system he has and can have no knowledge, and which even skilful physicians are often unable,

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[43] Vose *v.* Eagle Life & Health Ins. Co. (1850), 6 Cush. (*Mass.*) 42.

[44] Mass. Benefit Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918, 932.

[45] Penn Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co. (1896; C. C. A.) 72 *F.* 413, 432.

[46] (1884), 111 *U. S.* 335. See also Conn. Mut. Life Ins. Co. *v.* Union Trust Co. (1884), 112 *U. S.* 250.

[47] *Ibid.,* p. 339.

[48] *Ibid.,* p. 341.

after the most careful examination, to detect, the terms of the contract to that effect must be so clear as to exclude any other conclusion.

. . . .

Did the company expect, when requiring categorical answers as to the existence of diseases of that character, that the applicant should answer with absolute certainty about matters of which certainty could not possibly be predicated?[49]

. . . .

What was meant by "true" and "untrue" answers? In one sense, that only is true which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. But in another and broader sense, the word "true" is often used as a synonym of honest, sincere, not fraudulent. Looking at all the clauses of the application, in connection with the policy, it is reasonably clear—certainly the contrary cannot be confidently asserted—that what the company required of the applicant, as a condition precedent to any binding contract, was that he would observe the utmost good faith towards it, and make full, direct, and honest answers to all questions, without evasion or fraud, and without suppression, misrepresentation or concealment of facts with which the company ought to be made acquainted; and that by so doing, would he be deemed to have made "fair and true answers."

The jury should have been instructed, so far as the matters here under examination are concerned, that the plaintiff was not precluded from recovering on the policy; unless it appeared from all the circumstances, including the nature of the diseases with which the insured was alleged to have been afflicted, that he knew, or had reason to believe, at the time of his application, that he was or had been so afflicted.[50]

2. *Habits.*

The representations of the insured as to his correct and temperate habits also receive a liberal construction. The reported cases usually deal with the use of alcoholic beverages. The question became of increasing importance about 1850, "and it was a matter for inquiry as to how far the indulgence moderately in beer and spirit drinks might approach the excessive mortality admitted to result from positively intemperate indulgence." [51] No court, it seems, has ever defined what constitutes excessive use of alcoholic spirits.[52] A very liberal attitude is held by the United States Supreme Court, as evidenced in the discussion by Mr. Justice Field, who decided that the occasional use of liquor by a man does not render him a man of intemperate habits. The court thus explained its viewpoint: [53]

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[49] *Ibid.*, p. 343.

[50] *Ibid.*, pp. 345, 346. See Sharrer *v.* The Capitol Life Ins. Co. (1918), 102 *Kan.* 650. The insured denied having consulted a physician within five years prior to signing the application. He died some months after the policy was issued of cancer of the stomach or esophagus. The jury found he had consulted a physician several times within three months before taking out the policy, but since he was apparently healthy when the policy was issued, the policy was held valid. See further the very recent case of Houston *v.* N. Y. Life Ins. Co. (1930; *Wash.* Supreme Ct.) 292 Pac. 445.

> When we speak of the habits of a person, we refer to his customary conduct, to pursue which he has acquired a tendency, from frequent repetition of the same acts. It would be incorrect to say that a man has a habit of anything from a single act.
>
> The court did not, therefore, err in instructing the jury that if the habits of the insured, "in the usual, ordinary, and everyday routine of his life, were temperate," the representations made are not untrue, within the meaning of the policy, although he may have had an attack of *delirium tremens* from an exceptional over-indulgence.

The attitude of the English courts is not so liberal.[54] The following rule, established in an Ohio court, is probably as definite as is possible to formulate: [55]

> An occasional excess in the use of intoxicating liquor does not, it is true, constitute a *habit,* or make a man intemperate, within the meaning of this policy; but if the habit has been formed and is indulged in, of drinking to

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[51] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882),* Rev. Pub. & Print. Co., Phila. (1888), p. 679.

[52] McEwen *v.* N. Y. Life Ins. Co. (1919), 42 *Cal.* App. 133, 142. "The meaning of the word 'excess', as here used, is largely a matter of opinion, depending upon the capacity of the individual and liberality of view entertained upon the subject by the individual, whose opinion might again be governed by the time, place, and occasion."

[53] Insurance Co. *v.* Foley (1881), 105 *U. S.* 350, 354, approved in Northwestern Life Ins. Co. *v.* Muskegon Bank (1887), 122 *U. S.* 501, 512. See also Vance, "Handbook," *opus cit.,* p. 375.

[54] Thomson *v.* Weems, 9 App. Cas. (*Eng.*) 671 [1884]. Thus, by Lord Watson, p. 695: "I believe it to be useless to attempt a precise definition of what constitutes 'temperate habits,' or 'intemperance', in the sense in which these expressions are ordinarily employed. Men differ so much in their capacity for imbibing strong drinks that quantity affords no test; what one man might take without exceeding the bounds of moderation, another could not take without committing excess."

[55] Union Mut. Life Ins. Co. *v.* Reif (1881), 36 *Ohio* St. 596, 599.

> excess and becoming intoxicated, whether *daily* and *continuously* or periodically, with sober intervals of greater or less length, the person addicted to such a habit cannot be said to be of temperate habits, within the meaning of this policy.

3. *Relationships.*

The following case may be said to indicate the viewpoint of the courts regarding questions relating to family history and relationships. The insured represented all his brothers as living at the time of his making application for insurance. As a matter of fact, one had died four years previously. In delivering the judgment of the court, Mr. Justice Wilkin pointed out:[56]

> To hold that, as a precedent to any binding contract, he [the insured] should guarantee absolutely that none of his brothers were dead would be unreasonable, in the absence of a more explicit stipulation than here appears. . . . to hold him to absolutely guarantee that they were living, in order that he might obtain insurance, would sometimes be to require an impossibility, and would be almost absurd.

Increasing Liberality.

As above indicated, it is generally true that a material false representation will render the policy voidable at the option of the insurer even though there was no intent on the part of the insured to deceive. This view has been modified in certain states either by court decision or by statute.

1. *Court Decisions.*

One authority states that "misleading declarations, not necessary for the decision of the issues involved, to the effect that a misrepresentation, as distinguished from a warranty, though material will not avoid an insurance contract unless made with fraudulent intent, are becoming unfortunately frequent in recent judicial opinions."[57] For example, the Supreme Court of Pennsylvania recently handed down a decision holding this view. "It is undoubtedly the law," declared Mr. Justice Sadler, in speaking of representations, as distinguished from warranties, that "the making of an untrue statement of a material fact, causing the company to act to its prejudice, vitiates the contract, but a forfeiture does not follow where there has been no deliberate intent to deceive, and the known falsity of the answer is not affirmatively shown. Mere mistakes, inadvertently made, even though of material matters, or the failure to furnish all details asked for, where it appears there is no intention of concealing the truth, will not have this effect." [58]

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[56] Globe Mut. Life Ins. Ass'n *v.* Wagner (1900), 188 *Ill.* 133, 137. Of course, there must be absence of fraud or intentional misstatement.

[57] Vance, "Handbook," *opus cit.*, p. 363. See particularly notes 82 and 83. The reasons for such dicta arise out of legislation; the fact "that a statement of opinion or expectation will not avoid an insurance policy unless fraudulently made; . . . and in the confusion of concealment, which is harmless in most instances, when honest, with misrepresentation, which, if material, is fatal though honest." *Ibid.*, p. 364.

2. *Legislation.*

(a) Intent to Deceive.

New Hampshire seems to have been the first state to pass a law providing that mistakes or misrepresentations would not avoid a policy unless intentionally made. It applied to fire and marine insurance much the same principle that regulates the misstatement of the insured's age in life policies at the present time.[59] Such a law, requiring only good faith, is now in force in Washington with respect to life insurance.[60]

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[58] Kuhns *v.* N. Y. Life Ins. Co., Appellant (1929), 297 Pa. 418, 423. In Pennsylvania there is apparently no statute governing this point with respect to *life* insurance. Such a law, providing that statements in life insurance will not avoid policies unless false or material (Pa. L. (1885) P. L. 134, No. 101, § 1) was repealed June 1, 1911. Pa. L. (1911), p. 581. See also Prahm *v.* Prudential Ins. Co. (1922), 97 *N. J.* L. 206, 209. " . . . in order to avoid the policy for misrepresentation in the application, made a part thereof, the misrepresentation must be material and fraudulent."

[59] The law was first enacted in 1855 (N. H. L. (1855), ch. 1662, § 6) but was modified to read as follows: "No policy of insurance shall be avoided by reason of any mistake or misrepresentation, unless it appears to have been intentionally made; but the party insuring, in any action brought against them on such policy, may show the facts, and the jury shall reduce the amount for which such party would otherwise be liable as much in proportion as the premium ought to have been increased if no mistake or misrepresentation had occurred." N. H. Gen. Sts. (1867), p. 325, § 2. This did not apply to life policies. Bliss, *opus cit.,* p. 45; DeLancey *v.* Rockingham Farmers Mutual Fire Ins. Co. (1873), 52 *N. H.* 581.

[60] Section 34 (§ 7078 Rem. Comp. Stat.). See Wash. L. (1911), p. 197, § 34; L. (1915), p. 703, § 1. The act provides: "No oral or written misrepresentation or warranty made in the negotiation of a contract or policy of insurance, by the assured or in his behalf, shall be deemed material or defeat or avoid the policy or prevent it attaching, unless such misrepresentation or warranty is made with the intent to deceive." Provisions of this

(b) Increase of Risk.

Ohio was probably the first state to stipulate that statements to secure life insurance had to be willfully false and material before they could be used as a defense by the insurer, and to attempt a definition of materiality.[61] The next year Kentucky required a statement to be material or fraudulent to defeat recovery.[62] Pennsylvania enacted similar legislation in 1885.[63] Such statutes have been held constitutioned by federal and state courts.[64]

(c) Contribution to the Loss.

Missouri, in 1874, spread upon the statute books a law to the effect that in order to avoid the policy, the misrepresentation must

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sort would seem to go too far in their efforts to help the insured. See, for example, the very recent case of Houston *v.* N. Y. Life Ins. Co. (1930; *Wash.* Supreme Ct.) 292 Pac. 445, in which the court held that the act applied to reinstatement as well. The applicant for reinstatement had been advised to have an operation for appendicitis, and was planning so to do when he made a statement to the company that he was in good health. The jury finding no intent to deceive, the policy was held valid, two judges dissenting.

[61] Ohio L. (1873), p. 97, § 1, amending L. (1872), Act of April 27, § 18. " . . . provided, that no answer or answers to any interrogatory or interrogatories, made by any applicant, in his or her application for a life policy, shall bar the right to recover upon any policy issued upon such application, or be used in evidence upon any trial to recover upon such policy, unless such answer or answers shall first be clearly proven to have been willfully false and fraudulently made, and that such answer or answers are material, and induced such policy to be issued, and but for such answer or answers such policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer or answers."

[62] Ky. L. (1874), ch. 186, p. 20. "All statements or descriptions in any application for or policy of insurance shall be deemed and held representations and not warrantees, nor shall any misrepresentation, unless material or fraudulent, prevent a recovery on the policy." The act came before the courts in the case of Farmers' and Drovers' Ins. Co. *v.* Curry (1877), 13 Bush (*Ky.*) 312, which held that the act was effective only where the parties were silent as to the effect of such statements, but that it did not hinder the parties from agreeing that statements should be warranties. This decision was later overruled. See Germania Ins. Co. of N. Y. *v.* Rudwig (1882), 80 *Ky.*, 223, 234.

[63] *Supra,* note 58. The Pa. court held that such provisions cannot be waived by the assured. Hermany *v.* Life Ass'n (1892), 151 *Pa.* 17. Its constitutionality was upheld by the federal courts in Penn Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co. (1896; C. C. A.), 72 *F.* 413, 418. By Taft, Circuit Judge: That such statutes are remedial in their nature, and are quite within the police power of the legislature, is no longer a debatable question."

[64] *Supra,* note 63.

have contributed to the loss.[65] This sometimes reacts unfairly to the company.[66] The good or bad faith of representations as to health has been held immaterial under this statute.[67]

Still another type of provision was that enacted by Massachusetts in 1878.[68] It also has been followed by other states,[69] and although amended, remains the current law.[70] All of these laws may be said to have the same general purpose, namely, to prevent a forfeiture of an insurance contract unless the insurer has been deceived to his detriment. Some, perhaps, go a bit too far.[71]

Warranties

Warranties have received the severe condemnation of many courts and writers.[72] When the conditions under which insurance contracts were formed in the first days of the business are recalled,[73] the doctrine does not seem quite so unjust, oppressive, and grotesque. Bearing in mind the attitude of the courts with respect to concealment, it is not strange that when a policy contained a definite statement of fact or a promise of performance, "it became a warranty which must be exactly fulfilled, a failure involving forfeiture of the insurance." [74] The distinguishing characteristic of a warranty is that, under penalty of voiding the insurance, it must be strictly and absolutely complied with even though the insured misstates an immaterial or trivial fact because of an honest and even unavoidable mistake.[75] The courts assume that "the parties have agreed on the materiality of the thing warranted, and that the agreement precludes all inquiry on the subject." [76] While it is true in other contracts that the courts insist upon the performance of material conditions,[77] an innocent person is not deprived of all his rights because of some trivial or immaterial defect in performance.[78]

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[65] Mo. L. (1874), p. 89, § 1. "No misrepresentation made in obtaining or securing a policy of insurance in the life or lives of any person or persons shall be deemed material, or render the policy void, unless the matter misrepresented shall have actually contributed to the contingency or event on which the policy is to become due and payable; and whether it is so contributed in any case shall be a question for the jury." The law, with a minor change, is still in effect. (R. S. 1909, § 6937). Its constitutionality has been upheld. Schuermann *v.* Ins. Co., 165 *Mo.* 641; Northwestern Mut. Ins. Co. *v.* Riggs, 203 *U. S.* 243. Similar laws are found in other states, for example, Kan. Ins. Code (1927), § 40-418.

[66] "A policy of life insurance contained a stipulation that notwithstanding the age stated by the assured when obtaining the policy, the true age should govern and the amount due on the policy would be the amount the premiums would buy at the true age." Held an invalid provision, since the misstatement did not contribute to the loss. Burns *v.* Metropolitan Life Ins. Co. (1910), 141 *Mo.* App. 212.

[67] Burgess *v.* Pan-American Life Ins. Co. (1921; *Mo.* Supreme Ct.) 230 S. W. 315, citing case in note 66.

[68] Mass. L. (1878), ch. 151, § 1: "No oral or written misrepresentation made in obtaining or securing a policy of fire or life insurance shall be deemed material or defeat or avoid the policy, or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter represented increases the risk of loss." For a detailed analysis of such legislation in Mass., see White *v.* Prov. Savings Life Assur. Soc. (1895), 163 *Mass.* 108. See further Levie *v.* Metropolitan Life Ins. Co. (1895), 163 *Mass.* 117.

[69] Wis. Stats. (1921), s. 1977-1; (1923), ch. 291, s. 3.

[70] Mass. Gen. L. (1921), ch. 175 § 186.

[71] For additional legislation on this point, see *infra,* the discussion of warranties.

[72] "The history of the technical warranty in insurance law is instructive in showing how a rule, never very good or necessary, may . . . so degenerate through later associations and changed conditions as to become positively

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bad, and so injurious to society that it must needs be brought to an end by legal process.

"In the United States, the reign of the technical warranty is almost over. For over a century it has been condemned by courts and text writers as an instrument of oppression and unfair dealing, and this sentence of condemnation is now being rapidly executed in the several states by the enactment of statutes wholly abolishing it as a rule of law. Even in those states, now relatively few, in which it has not been specifically abolished by statute, the warranty has been deserted even by its only friends, the underwriters." Vance, W. R., "The History of the Development of the Warranty in Insurance Law" (1910-11), 20 *Yale L. Jour.* 523.

[73] *Supra,* concealment.

[74] Richards, *opus cit.,* p. 7.

[75] "Where the answers to questions propounded in an application for insurance are made warranties by the terms of the contract of insurance, its validity depends upon the literal truth of such answers, and it is a matter of no consequence whether they are material to the risk or not. Being warranties, they are in the nature of conditions precedent, and, like them, must be strictly complied with." Metropolitan Life Ins. Co. *v.* Rutherford (1900), 98 *Va.* 195, 199. So also in Aetna Life Ins. Co. *v.* France (1875), 91 *U. S.* 510, 512: "It is only necessary to reiterate that all the statements contained in the proposal must be true; that the materiality of such statements is removed from the consideration of a court or jury by the agreement of the parties that such statements are absolutely true, and that, if untrue in any respect, the policy shall be void."

[76] Burritt *v.* The Saratoga County Mut. Fire Ins. Co. (1844), 5 Hill (*N. Y.*) 188, 193. This case contains citations of many earlier cases.

[77] Norrington *v.* Wright (1885), 115 *U. S.* 188; Morgan *v.* Birnie (1883), 9 Bing. (*Eng.*) 672; Smith *v.* Dart & Son (1884), 14 Q. B. D. (*Eng.*), 105.

[78] Nolan et al., Respondents, *v.* Whitney, Appellant (1882), 88 *N. Y.* 648, 649: "It is a general rule of law that a party must perform his contract

Development.

1. *In England.*

Before Lord Mansfield's appointment to the Court of King's Bench in 1756, the word warranty seemed to have no particular meaning, other than that of strict performance.[79] As a matter of fact, it developed gradually,[80] but it was not until the case of DeHahn *v.* Hartley [81] that the doctrine was fully established. The facts were briefly these: The *Juno* was insured with cargo "at and from Africa to her port or ports of discharge in the British West Indies." In the margin of the policy were written the words "Sailed from Liverpool with 14 six-pounders, swivels, small arms, and 50 hands or upwards; copper sheathed." But the *Juno* sailed from Liverpool with only forty-six hands, although six hours after sailing six more hands were taken on at Beaumaris, a full crew being carried until the vessel was captured "while she remained on the coast of Africa." The underwriters contended that the warranty had been violated, although the number in the crew was as warranted *before the risk attached;* and they sought to recover the payment which had been made before they knew that the warranty had been violated. The reasoning of the court was given by Lord Mansfield, Ch. J.: [82]

> There is a material distinction between a warranty and a representation. A representation may be *equitably* and substantially answered: but a warranty must be *strictly* complied with. Supposing a warranty to sail on the 1st of *August*, and the ship did not sail till the 2d, the warranty would not be complied with. A *warranty in a policy of insurance is a condition* or a contingency, and unless that be performed, there is no contract. It is perfectly

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before he can claim consideration due him upon performance; but the performance need not in all cases be literal and exact. It is sufficient if the party bound to perform acting in good faith, and intending and attempting to perform his contract, does so substantially, and then he may recover for his work, notwithstanding slight or trivial defects in performance, for which compensation may be made by an allowance to the other party." See also Singer Manufacturing Co. *v.* McLean (1894), 105 *Ala.* 316; Oberlies, Appellant, *v.* Bullinger, Respondent (1892), 132 *N. Y.* 598, in which a roof five inches lower than specified was held immaterial; The Austin Friars (1894), 71 L. T. (*Eng.*) 27.

[79] Jefferies *v.* Legendra (1691), 4 Mod. (*Eng.*) 58; Lethulier's Case (1692), 2 Salked (*Eng.*) 443; Gordon *v.* Morley, Campell *v.* Bordieu (1747), 2 Stranges Rep. (*Eng.*) 1265.

[80] For a detailed discussion, see Vance, "History," *opus cit.*, pp. 527-529.

[81] (1786), 1 T. R. (*Eng.*) 343.

[82] *Ibid.*, pp. 345, 346.

> immaterial for what purpose a warranty is introduced; but, being inserted, the contract does not exist unless it be literally complied with. Now in the present case, the condition was the sailing of the ship with a certain number of men; which not being complied with, the policy is void.[83]

Just as the courts developed the doctrines of concealment and misrepresentation with respect to marine insurance, and applied them to the other fields, so also did they apply the doctrine of warranties. Justification of this strict rule in construing life policies is found in the leading case of Anderson *v.* Fitzgerald, as set forth by the Lord Chancellor: [84]

> The company stipulates this, that the assured shall contract with the company that he warrants certain things to be correct, and further stipulates that if he should make to the company any untrue statement in and about effecting the policy, such untrue statement shall avoid the policy; and then the company says that it will not contract with him till he shall answer certain questions which are made the basis of the contract. Among those questions are these two: "Have any of your relations died of pulmonary complaints? Has an insurance on your life been accepted or refused at any other office?" The stipulation is, that if he shall not answer these questions accurately, the policy shall be void. That is the interpretation of the contract, which, taking together the policy and the particulars required to be subscribed, appears to me irresistible. The requirement is extremely reasonable. That we need not speculate on; but the reason for making such a stipulation is obvious, and is explained by this very case. Whether certain statements are or are not material, where parties are entering into a contract of life assurance, is a matter upon which there must be a divided opinion. Nothing, therefore, can be more reasonable than that the parties entering into that contract should determine for themselves what they think to be material, and

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[83] "The practical result reached by the courts before Mansfield retired from the bench may be stated thus: The description of the risk upon which the underwriter relied in determining whether he would assume the risk or not, or at what premium he would assume it, might be found within the policy or without it. So far as the descriptive terms chanced to be within the policy, they must be literally true, irrespective of their materiality, but if they chanced to be without the policy the insurance remained valid unless the misdescription was of such character as really to injure the underwriter; that is, unless the misdescription was substantial and material." Vance, "History," *opus cit.,* p. 531.

[84] (1853), 4 House of Lords Cases (*Eng.*) 484, 502. But see pp. 507, 515. This decision was approved in Cazenove *v.* The British Equitable Assur. Co. (1859), 6 C. B., N. S. (*Eng.*) 437, affirmed (1860) 6 Jurist, N. S. (*Eng.* Exch. Cham.) 826.

if they choose to do so, and to stipulate that unless the assured shall answer a certain question accurately, the policy or contract which they are entering into shall be void, it is perfectly open to them to do so, and his false answer will then avoid the policy.

2. *In the United States.*

As may be supposed, the courts in this country also adopted a strict interpretation of the effect of a warranty.[85] This was at first true regarding every branch of insurance, but, as has been stated, the difference between the various kinds was soon recognized.[86] Where there is no doubt concerning the existence of a warranty, however, the courts will enforce the doctrine even with respect to life policies.[87] With the growing reluctance on the part of the courts to forfeit life and fire policies because of the existence of technical warranties,[88] it soon became their policy to subject the words of the contract to the closest scrutiny in order, if at all possible, to avoid such a result.[89] Their attitude has been thus expressed by Mr.

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[85] Mutual Ben. Life Ins. Co. *v.* Wise (1871), 34 *Md.* 582; Metropolitan Life Ins. Co. *v.* McTague (1887), 49 *N. J.* L. 587, 592; O'Neil *v.* The Buffalo Fire Ins. Co. (1849), 3 *N. Y.* 122; Ripley *v.* Aetna Ins. Co. (1864), 30 *N. Y.* 136, 162; Foot *v.* Aetna Life Ins. Co. (1875), 61 *N. Y.* 571, 576; Gaines *v.* Fidel. & Cas. Co. (1907) 188 *N. Y.* 411, 415.

[86] *Supra,* Concealment.

[87] Thus, in the leading case of Jeffries *v.* Life Ins. Co. (1874), 22 Wall. (*U. S.*) 47, 53, where the insured falsely answered questions as to his marital status, and other insurance, the court said, "There is no place for the argument either that the false statement was not material to the risk, or that it was a positive advantage to the company to be deceived by it."

[88] There seems to be some doubt as to what constitutes a warranty. The parties must clearly have intended making it such. "Neither the fact that the word 'warranty' is used or omitted is conclusive of the nature of a statement or its effect on the policy." Hancock *v.* Knights of Security (1922), 303 *Ill.* 66, 71. "Even calling the statements warranties will not make them such, when other terms in the contract indicate a different understanding." Vivar *v.* Supreme Lodge of Knights of Pythias (1890), 52 *N. J.* L. 455, 466. "It was determined that a statement should bear the magical potency of the warranty if it was written anywhere on the face of the policy as on the margin, straight or obliquely; but if the written statement was inscribed on a different paper folded within the policy, or even fastened by a wafer to the policy it was no more than a representation . . . " Vance, "History," *opus cit.,* p. 530, and cases there cited.

[89] See, for example, in a fire insurance case, the liberal meaning placed by the court on the words "detached at least one hundred feet." Burleigh *v.* Gebhard Fire Ins. Co. (1882), 90 *N. Y.* 220. See also, Insurance Co. *v.* Slaughter (1870), 12 Wall. (*U. S.*) 404; Grace *v.* Am. Cent. Ins. Co. (1883), 109 *U. S.* 278, 282; Moulor *v.* Am. Life Ins. Co. (1884), 111 *U. S.* 335, 342; Hoeland *v.* Western Union Life Ins. Co. (1910; *Wash.* Supreme Ct.) 107 *Pac.* 866, 868.

Justice Harlan in the case of National Bank *v.* Insurance Company:[90]

> . . . when a policy of insurance contains contradictory provisions, or has been so framed as to leave room for construction, rendering it doubtful whether the parties intended the exact truth of the applicant's statements to be a condition precedent to any binding contract, the court should lean against that construction which imposes upon the assured the obligation of a warranty. The company cannot justly complain of such a rule. Its attorneys, officers, or agents prepared the policy for the purpose, we shall assume, both of protecting the company against fraud, and of securing the just rights of the assured under a valid contract of insurance. It is the language which the court is invited to interpret, and it is both reasonable and just that its own words should be construed most strongly against itself.

Then, too, although courts interpret literally statements of facts and promises of performance, good faith is usually held sufficient "in the case of statements of opinion, expectation or belief, though in the form of warranties."[91]

Kinds of Warranties.

Warranties may be either affirmative or promissory. In an affirmative warranty "the insured undertakes for the truth of some positive allegation"; in a promissory warranty "the insured undertakes to perform some executory stipulation."[92] The presumption is that warranties are affirmative rather than promissory.[93]

Conditions and Exceptions.

Conditions differ from warranties in that a breach of warranty will render a policy void irrespective of its materiality, while in order to sustain a forfeiture of the policy in case of a condition the company must prove that both the condition and the breach are material.[94]

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[90] National Bank *v.* Insurance Co. (1877), 95 *U. S.* 673, 678.

[91] Richards, *opus cit.,* p. 13.

[92] O'Neil *v.* Buffalo Fire Ins. Co. (1849), 3 *N. Y.* 122, 124.

[93] *Ibid.* See also Vance, "Handbook," *opus cit.,* p. 387, § 112. "The rule requiring promissory warranties to be strictly performed has not in practice worked out differently from the general rule that requires strict performance of all material terms in other kinds of mercantile contracts, for it is difficult to find any instance of an immaterial promissory warranty." Vance, "History," *opus cit.,* p. 532.

[94] Vance, "Handbook," *opus cit.,* p. 398.

An exception withdraws "from the coverage of the policy, as delimited by the general language describing the risk assumed, some specific risk which the underwriter declares himself unwilling to undertake." [95]

Legislation.

Because of the unconscionable hardship inflicted upon the insured by the common law doctrine of warranties, the legislatures of the various states took steps to modify or abolish the doctrine with respect to life and fire insurance. The statutes, while differing widely in their wording, have usually had the effect of transforming warranties into common law representations, thus requiring materiality of a misstatement as a ground for forfeiture.[96] The state of Maine enacted such a law in 1861.[97] Acts pertaining to representations were held by the courts to apply to warranties as well.[98] Such legislation became general after the Armstrong investigation, which recommended "that all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties." [99]

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[95] *Ibid.*, p. 405.

[96] This is undoubtedly good legislation. As early as 1853, Ranney, J., in discussing the question, stated: "When these questions properly arise, it will undoubtedly be worthy of serious consideration, whether the general principles of law, as applied to other contracts, are not altogether sufficient to protect the rights and interests of both parties to this; and whether justice is best promoted in allowing either party to escape from its obligations for causes other than those that might have affected his interests." Hartford Protection Ins. Co. *v.* Harmer 1853, 2 *Ohio* St. 452, 468. "It is a cause for gratification that the total abolition of the warranty, which never had good reason for existence and now has none at all, will tend to enable the courts to apply to insurance policies the same rules of construction that determine the meaning of other contracts." Vance, "History," *opus cit.*, p. 534.

[97] Me. Acts (1861), ch. 34, §§ 3, 4. This provided that all statements of description should be deemed representations and not warranties. It apparently did not apply to life insurance. Bliss, *opus cit.*, p. 45.

[98] White *v.* Provident Savings Life Assur. Soc. (1895), 163 *Mass.* 108. For a discussion of these laws, see *supra,* representations. See further, Couch, G. J., *Cyclopedia of Insurance Law,* Lawyers Co-operative Pub. Co., Rochester (1929), vol. 1, p. 303, § 154. Canada passed such a law in 1886. 49 Vict., ch. 45, §§ 27, 28.

[99] *Report of the Joint Committee of the Senate and Assembly, etc.,* Albany (1906), 10 vols. vol. 10, p. 441. This is the present law of New York and some of the other states. See, for example, N. J. L. (1907), ch. 72; N. Y. Ins. Law, § 58; Ohio Ins. Laws, § 9420. For interpretation of such laws by the courts, see Prahm *v.* Prudential Ins. Co. (1922), 97 *N. J.* L. 206, 209;

Company Practice.

It is a matter of common knowledge that persons frequently endeavor to defraud insurance companies by failing to disclose material information. It was to protect the underwriters against such practices that the doctrines of concealment, representation, and warranty were built up in the law. There is early evidence that many life companies did not take advantage of unintentional errors to bring about a forfeiture of the insurance,[100] but others often were not so equitable.[101] In the seventies many companies were organized by those who did not know insurance, and the last step to keep solvent was to refuse to pay claims.[102]

At the present time insurance companies are less dependent upon the statements of the insured, because of the better organization of their inspection service,[103] and the use of breach of warranty as a defense is discouraged.[104] Most policies contain some such provision as the following: [105]

> All statements made by the Insured shall, in the absence of fraud be deemed representations and not warranties, and no statement shall avoid or be used in defense to a claim under this Policy unless contained in the written application and a copy of the application is attached to the Policy when issued.

The Incontestable Clause

The harshness of some of the doctrines just discussed is considerably ameliorated by the existence in present-day policies of the incon-

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Grubiak *v.* John Hancock Mut. Life Ins. Co. (1923), 202 *N. Y.* S. 355. See also, McIntosh, J. H., "Misrepresentations as a Defense to Policy Contracts," *P. A. L. I. C.* (1913-21), Paper No. 3; Langstaff, J. M., "Misstatements That Avoid the Policy," *T. A. S. A.* (1907-08), vol. 10, pp. 452, 701.

[100] "On the Casualties to Which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, pp. 241, 243.

[101] Moir, Henry, "Liberality of Modern Policies," *T. A. S. A.* (1911), vol. 12, pp. 175, 177. See also the discussion, *T. A. S. A.* (1912), vol. 13, p. 113. By Mr. Dawson, quoted *supra,* p. 50, note 69.

[102] Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. Pol. & Soc. Sci., Phila. (1905), p. 34.

[103] Patterson, E. W., *The Insurance Commissioner in the United States,* Harv. Univ. Press. (1927), p. 246.

[104] "Let us unitedly go forward onto a still higher plane by abandoning all defenses based on warranties . . . " McIntosh, *opus cit.,* p. 8.

[105] Appendix X. See also the written discussion by Rhodes, E. E., of Mr. Henry Moir's paper, "Divergent Development of Life Insurance in Britain and America." *T. A. S. A.* (1928), vol. 29, p. 276. This does not appear to be customary in England.

testable clause. As a matter of fact, the doctrines of concealment and misrepresentation, although perfectly justified, are rendered inoperative because of the company's agreement not to set up as a defense any error, concealment, misstatement, or even fraud, on the part of the insured, after the policy has been in effect for a certain length of time. The incontestable clause is unique in that contrary to the general law that fraud vitiates all contracts, it permits the legal enforcement of a contract that has been procured by fraud. The development of such clauses is very interesting, and their use is of outstanding importance in affording the insured a contract which is enforceable without an expensive law-suit.

Development.

1. *In England.*

In England the introduction of the incontestable feature preceded its use in America. Indications are found that it was first issued in the middle of the last century.[106] A pamphlet on life insurance, published in 1854, contains the advertisements of three companies, calling attention to the indisputable nature of their policies.[107] Encouragement was offered in some of the insurance magazines.[108]

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[106] In writing of the year 1848, Walford, *opus cit.,* p. 441, states: "The *Indisputable* Life, which came into existence on the plea that the contract of Life Assurance was of an almost sacred character—so sacred, that the policy once issued, and the premium regularly paid, no tribunal should intervene to prevent the absolute payment of the sum stipulated. Pamphlets were written and circulated in tens of thousands inculcating these views, and entirely ignoring the fact that the trust reposed in Directors and Managers implies that the honest policyholders must be protected from the frauds of the dishonest ones; that the funds are to be administered for the benefit of the members generally, and no preference be shown to dishonesty and craft. By the irony of fate, one of the first claims made upon this hyper-virtuous Company involved questions which could alone be adjudicated in a Court of Law; and so it may be said that the theory of indisputability so set up, speedily revenged itself upon its propounders." As may be judged, incontestable clauses were not always well thought of by insurance authorities.

[107] An advertisement of the Waterloo Life Assurance Company, of the Professional Life Assurance Company, and of The Hope Mutual Life Assurance and Honesty Guarantee Society, the latter excluding "premeditated fraud." Keating, M. G., "Life Assurance, a Lecture," pub. in 1854, *Pamphlets, Finance,* vol. 286.

[108] "No greater encouragement can probably be given to the practice of life assurance than the making its contracts as secure as the nature of them

Moreover, the English courts held the companies to their promises. A policy issued in October, 1851, by the Equity and Law Life Assurance Society provided "that if any statement or allegation contained in the declaration thereinbefore referred to, . . . were untrue, or if the assurance thereby made should have been obtained through any misrepresentation, concealment, or untrue averment whatsoever, then the policy should be null and void." [109] However, before taking the policy, the insured had seen a prospectus of the company, stating that policies "should be indisputable except in cases of fraud." [110] The company contended that the proposal and not the prospectus governed, but the court held this inconsistent and repugnant, and ruled that statements in the proposal must be *fraudulently* untrue to void the policy. [111]

2. *In the United States.*

In this country the clauses at first used were much less comprehensive than those in England. According to one writer, the Manhattan Life Insurance Company, in 1864, announced its policies as incontestable after five years "for or on account of error, omissions and misstatements in the application except as to age." [112] Adver-

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will permit, and the rendering as light as possible the consequences of any breach of them. . . . from more than one quarter the public has the offer of 'indisputable' policies and, from others, 'unchallengeable' ones; . . . " "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 241.

[109] Wood *v.* Dwarris (1856), 11 Exch. (*Eng.*) 493, 495. This is the first case dealing with the question.

[110] *Ibid.*, p. 496.

[111] *Ibid.*, pp. 501, 503. The question again arose the following year and the court interpreted a clause in the prospectus that "every restriction which experience has shown not to be absolutely necessary to be retained has been withdrawn, so that all assurances with the Association shall be unquestionable, except where fraud has been practiced in obtaining them" as being "an absolute guarantee that no objection shall be taken to defeat the policy on the death of the party whose life is insured, subject to the implied exception of personal fraud which will vitiate every contract." Wheelton *v.* Hardisty (1857), 8 El. & Bl. (*Eng.*) 232, 282.

[112] Fowler, *opus cit.*, p. 729. The Superintendent of Insurance in New York had previously expressed the opinion that "policies might perhaps be safely made indisputable after the lapse of a certain number of years." *N. Y. Ins. Rep.* (1862), vol. 3, p. xxxvi.

tisements began to appear in the insurance journals.[113] But the clause itself, as well as the policy, was often replete with exceptions.[114]

Great impetus was added to the growth of the clause in 1879 by the announcement of a large company in the summer of that year that the "dissatisfaction which prevails throughout the community with regard to onerous conditions contained in life assurance contracts and the judicial decisions based thereon, together with the public indorsement of the liberal usages of this Society, as shown by its largely increased business, has led the management seriously to consider whether the contract could not be simplified and certain conditions erased therefrom which have been the subject of much criticism and misconception." [115] Policies were accordingly made incontestable after three years.[116] Competition among the companies gradually increased the liberality of this feature, until policies were issued which were incontestable from date.[117] One of the factors inducing the companies to issue liberal clauses was their realization that juries frequently found for the insured even when the facts justified a forfeiture.[118] But the clause was not without its opponents.[119] And at least one intriguing reason was advanced against its universal use.[120]

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[113] *Insurance Monitor* (1866), vol. 14, p. 368; *ibid.* (1867), vol. 15, p. 158.

[114] One clause in a policy issued in 1872, read as follows: "This policy shall be incontestable for any errors or omissions contained in the application not affecting the age, health, or family history of the insured." Fuller et Ux *v.* Life Insurance Co. (1898), 70 *Conn.* 647, 659.

[115] Fowler, *opus cit.,* p. 798. See also Fiske, Haley, "Fifty Years of Life Insurance," *P. A. L. I. P.* (1925), vol. 19, p. 121; Dawson, M. M., *Elements of Life Insurance,* Spectator Co., N. Y. 2d Ed. (1902), p. 142; *Insurance Monitor* (1880), vol. 28, p. 81.

[116] Fowler, *opus cit.,* p. 798, footnote. The company was the Equitable Life Assurance Society of the United States. Its clause read as follows: "And the said society does hereby further promise and agree that after three years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums, at the times and place, and in the manner herein stipulated, and that the regulations of the society as to age, residence, travel, occupation and employments shall be observed, and that in all other respects, after the expiration of said three years, the liability of the said society under this policy shall not be disputed."

[117] See, for example, Moore, C. I. D., *The Pacific Mutual Life Insurance Company of California* (1928), p. 133; *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia* (1922), p. 69, 75; Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company,* N. Y. (1895), pp. 250, 303; Hudnut, J. M., *History of the New-York Life Insurance Company,* N. Y. (1906), p. 30. The policy was made "incontestable from the inception of the contract, instead of after one year." See further Harris, G. H., *The President's Book,* Sun Life Assurance Co. of Can. (1928), p. 82, *et seq.*

[118] "In the light of this case the Company apparently was as safe without restrictions as with them. . . . If restrictions failed to protect the assurer,

In 1905, of fifty-one representative companies, only two had no incontestable clause. Two stipulated incontestability from date of issue; seventeen, after one year; twenty-seven, after two years; two, after three years; and one, after five years.[121] At the present time, of the fifty leading companies in the United States, all stipulate that the policy shall be incontestable. Twenty-five grant a one-year term (seven of which provide that the insured must be living, otherwise the term is two years), and twenty-five, a two-year term. All companies exclude non-payment of premiums, but this is the only exclusion in thirty-four cases.[122] The following clause illustrates the wording now in use: [123]

> Except for non-payment of premiums and except for the restrictions and provisions applying to the Double Indemnity and Disability Benefits as provided in Sections 1 and 3 respectively, this policy shall be incontestable after one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue.

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and at the same time menaced the assured, why have them?" Harris, *opus cit.,* p. 83. See also *Insurance Monitor* (1880), vol. 28, p. 188.

[119] See, for example, two articles upholding the right of a company to contest claims based on fraud in order to protect the assets of the company held in trust for widows and orphans. *Insurance Journal,* Hartford (1873), pp. 69, 81. See *supra,* note 106. The following viewpoint is interesting: "The new and beautiful lie-all-you-want-to-if-we-don't-find-you-out-in-three-years policy is sowing the wind for its authors and adopters, and in a few years they will reap a whirlwind of swindling, lawsuits, and a fury of disappointed greed and dishonesty.

"The *Record* teaches that the incontestable policy is not only a fraud in itself and a promoter of fraud, and that it is perfidiously offered by the companies issuing it as a bait which they intend to repudiate, but that less care is given to the examination of applicants than is given in ordinary cases.

"It is very well known that at least four prominent companies have adopted the incontestable policy . . ." *Insurance Monitor* (1883), vol. 31, p. 189.

[120] According to one of the chief officers of a leading company, the clause was not granted to Europeans. "It is true we discover very little fraud among the European policyholders, but that is because their schemes are so clever we cannot run them down." *Insurance Monitor,* (1893), vol. 41, p. 432.

[121] Fouse, *opus cit.,* p. 41. Compare the above with the situation in 1898, as discussed in McCall, J. A., *A Review of Life Insurance* (1898), p. 51.

[122] Other exclusions sometimes found are war (eight companies), provisions relating to disability (eight companies) and to double indemnity (eight companies). *Best's Illustrations,* N. Y. (Sept., 1930).

[123] Appendix X.

Legislation.

Although Ohio passed a law as early as 1872 providing that policies of life insurance should be incontestable after three years,[124] such legislation did not become general until the passage of statutes in the various states as a result of the Armstrong and other investigations.[125] The New York law required incontestability after two years, except for non-payment of premiums, and military or naval service in time of war.[126] Because of adverse court decisions, presently to be discussed, the original provisions were amended in 1921 [127] and 1923 [128] to permit further exclusions.[129]

Court Decisions.

The attitude of the courts toward the incontestable clause has been remarkably favorable to the insured. Mr. Justice Holmes has stated that, "the object of the clause is plain and laudable—to create an absolute assurance of the benefit, as free as may be from any dispute of fact except the fact of death, and as soon as it reasonably can be done." [130] Another court has expressed its approval thus: [131]

> The provision as to incontestability seems to be a most reasonable one. It is fair both to insurer and insured, for it is calculated to make the former diligent in investigating the truth or falsity of the statements made in the application for the policy and affords time for the investigation; while to the latter it furnishes an incentive to promptness in paying the second and all subsequent premiums and gives assurance that in his incontestable policy he

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[124] Ohio L. (1872), p. 150, § 32. "All life insurance companies, after having received at least three annual premiums, on any policy issued on the life of any person in the state, are hereby estopped from defending against any claim arising upon such policy by reason of any errors, omissions or misstatements of the assured in any application made by such assured on which said policy was issued, except as to age or fraud."

[125] For a discussion of such legislation, see *supra,* ch. 3.

[126] N. Y. L. (1906), ch. 326.

[127] N. Y. L. (1921), ch. 407, p. 1252, adding, "after it has been in force during the lifetime of the insured for a period of."

[128] N. Y. L. (1923), ch. 28, p. 29, adding, "and at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted."

[129] For the present provisions see Appendix XVI. See also Mass. Gen. L., ch. 175, § 132, para. 2.

[130] Northwestern Life Ins. Co. *v.* Johnson (1920), 254 *U. S.* 96, 101.

[131] Citizens Life Ins. Co. *v.* McClure (1910), 138 *Ky.* 138, 148.

> has a safe investment by which those dependent upon him may be benefited after his death. There is nothing in such a stipulation hurtful to the rights of the parties, or contrary to public policy.

For the purposes of analysis clauses may be classified into three groups, those providing for incontestability, (1) from date of issue, including fraud, (2) from date of issue, excepting fraud, and (3) after a certain period of time.

1. *Incontestability From Date of Issue, Fraud Excluded as a Defense.*

(a) In General.

The general rule is that contracts excluding fraud[132] as a defense immediately upon issue are void as against public policy.[133] In 1899, it was held by an Iowa court that a policy providing that it "shall be incontestable for any cause except misstatement of age" may nevertheless be contested for fraud entering into it.[134] The Massachusetts courts have adopted the same doctrine,[135] but nothing less than actual fraud is open as a defense.[136]

(b) Exceptions.

Several jurisdictions, however, recognize the right of companies to issue policies, immediately incontestable and excluding fraud as a defense. The reasoning supporting such a doctrine is well stated in a Tennessee decision:[137]

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[132] "The legal definition of fraud does not, however, include necessarily any degree of moral turpitude. There is fraud in law, if a man makes a representation which he knows to be false, . . . with the view to induce another to act on the faith, who does so accordingly, and by so doing, sustains damage, although he may have had no dishonest purpose in making the representation." Northwestern Life Ins. Co. *v.* Montgomery (1902), 116 *Ga.* 799, 807, quoting from Kerr, *Fraud* (Am. ed.), 55.

[133] For a discussion of the early cases on this as well as other points, see Fehr, Jacob, Jr., "The Incontestable Clause in a Life Insurance Policy." (1897), 45 *Cent. L. J.* 425. See further Joyce, J. A., *A Treatise on the Law of Insurance of Every Kind,* Lawyers Co-operative Pub. Co., Rochester, 2d Ed. (1918), 5 vols., vol. 5, § 3733a.

[134] Welch *v.* Union Cent. Life Ins. Co. (1899), 108 *Iowa* 224. See also Mass. Benefit Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918, 924; Wheelton *v.* Hardisty (1857) 8 El. & Bl. (*Eng.*) 232. *Supra,* note 111.

[135] Reagan *v.* Union Mut. Life Ins. Co. (1905), 189 *Mass.* 555, 557; N. Y. Life Ins. Co. *v.* Hardison (1908) 199 *Mass.* 190, 195.

[136] Reagan *v.* Union Mut. Life Ins. Co. (1910), 207 *Mass.* 79, 85.

[137] Insurance Co. *v.* Fox (1900), 106 *Tenn.* 347, 353.

> If the time may be limited to one year within which the defense of fraud may be made available, it is difficult to see why it may not be limited to six months or one month, or such other time less than this as the company may deem it important to stipulate. If fraud may be waived at all, certainly the parties may stipulate the grounds upon which the waiver may be made, and if a company can stipulate that its policies shall be incontestable, it may fix the conditions upon which incontestability shall rest, and may fix a time limit upon the right to contest.

After pointing out that a company may take as long as it wants to investigate the applicant,[138] the court stated, that "it may, therefore, well be held to have waived the effects of fraud, since it had such time to discover it as it saw proper."

(c) Statutes.

It is the custom among states which have enacted standardized clauses to permit companies to issue provisions more favorable to the insured than those prescribed. Thus, in New York, where the incontestable period is fixed at two years, the Superintendent permitted a one-year clause as more favorable,[139] but refused approval of a clause immediately incontestable as against public policy.[140] Such a clause, while more favorable to the individual, is not more favorable to the whole group.[141]

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[138] Tennessee Life Ins. Co. *v.* Nolen (1913), 108 *Ark.* 511, 514: "Conceding that it is against sound public policy to permit the company to stipulate for immediate incontestability, even against fraud, yet the parties, when they come to close the contract, may stipulate for a waiver of matters which have been inquired into in the application. We see no reason why the company should not be permitted to contract that it will waive all inquiry into the truth of answers which it has had an opportunity to fully investigate. That is a different thing from waiving all inquiry as to fraud." See also Duvall *v.* The National Ins. Co. (1916), 28 *Idaho* 356, 360; Patterson *v.* Natural Prem. Mut. Life Ins. Co. (1898), 100 *Wis.* 118. While these decisions may be legally justifiable, nevertheless, as one official points out, to issue policies incontestable from date would involve expensive investigation. Fouse, L. G., "The Policy," *The Business of Insurance,* H. P. Dunham, Ed., Ronald Press, N. Y. (1912), 3 vols., vol. 1, p. 308. It is interesting to note that the U. S. War Risk Insurance contains a clause which is incontestable from date, except as to non-payment of premiums. *Form 741, Treasury Department, Bu. of War Risk.*

[139] N. Y. Rulings (1916), p. 305, quoted in Patterson, *opus cit.,* p. 261.

[140] N. Y. Rulings (1906), p. 304, quoted *ibid.*

[141] *Ibid.* See also N. Y. Life Ins. Co. *v.* Hardison (1908), 199 *Mass.* 190.

2. *Incontestability From Date of Issue, Except for Fraud.*

Clauses which render the policy immediately incontestable except for fraud are generally upheld as being not contrary to public policy. Such a stipulation will be binding upon the parties, even though it takes effect from the moment the policy is issued.[142]

3. *Incontestability After a Certain Time.*

The courts have universally upheld this type of provision. Where the false statements or omissions are innocently made, absolutely no question arises,[143] even though such statements are construed as warranties and not representations.[144] In an early case it was contended by the company that the clause was conditional upon the policy having been in force, and that it was not in force because at the time of its delivery the insured was not in good health.[145] The court ruled as follows:[146]

> The argument that the policy was not in continuous force is predicated upon an extrinsic fact not appearing upon the face of the policy, to wit, the fact that the assured was not in good health at the date of delivery of the policy. In setting up, or even relying upon, this extrinsic fact, the company is contesting its policy as evidence of its obligation. If the company is at liberty to set up this fact after the lapse of more than 5 years, it is equally at liberty to set up after the lapse of 40 years. Instead of being an incontestable policy, if we adopt the defendant's argument, the policy is always contestable.

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[142] Wood *v.* Dwarris (1856), 11 Exch. (*Eng.*) 493, 495; Mass. Benefit Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918, 924; Independent Life Ins. Co. *v.* Rider (1912), 150 *Ky.* 505, 507. "If Rider was a good enough risk for defendant to accept his premiums without inquiry during his lifetime, he was a good enough risk for it to pay the insurance now that he is dead."

[143] Strong, W. M. "The Incontestable Clause in Life Insurance Policies," *T. A. S. A.* (1907-08), vol. 10, p. 640: For a general discussion of the clause see also Keesling, F. V., "The Ubiquitous Incontestable Clause," *P. A. L. C., L. S.* (1928), vol. 21, pp. 229-246.

[144] Owen *v.* Bankers Life Ins. Co. (1909), 84 *S. Car.* 253.

[145] Mutual Res. Fund Life Ass'n *v.* Austin (1905; C. C. A. 1), 142 *F.* 398.

[146] *Ibid.*, pp. 401, 402. Other courts have ruled likewise. See, for example, Healy *v.* Metropolitan Life Ins. Co. (1911), 37 App. *D. C.* 240; Webster *v.* Columbian Nat. Life Ins. Co. (1909), 116 *N. Y. S.* 404; Mohr *v.* The Prudential Ins. Co. (1911), 32 *R. I.* 177; Patterson *v.* Natural Prem. Mut. Life Ins. Co. (1898), 100 *Wis.* 118; 6 L. R. A. (N. S.) 1064.

(a) Fraud.

(i) In General.

For reasons sufficiently clear in the subsequent discussions by various courts, clauses excluding fraud as a defense after the lapse of a period of time adequate to permit proper investigation have been held valid. In the case of Wright *v.* Mutual Benefit Life Association,[147] the company contended that a clause condoning fraud would be contrary to public policy. But the court disagreed, Follett, J., stating the opinion:[148]

> The practical and intended effect of the stipulation is, as held by the trial court, to create a short statute of limitations in favor of the insured, within which limited period the insurer must test, if ever, the validity of the policy. It is settled that a stipulation in a policy limiting the time within which an action may be brought thereon, is not against public policy, and that an action begun after the lapse of the stipulated time cannot be maintained.

If the above is not against public policy, the court continued,

> it is difficult to see upon what ground a stipulation shortening the time which the statute and the rules of common law give an insurer to enforce its rights in the courts, can be held to contravene public policy. A stipulation like the one under consideration ought to be an incentive for the insurer to exercise vigilance and good faith in investigating the truth or falsity of the representations upon which the policy is issued while the matter is fresh. The witnesses are all alive and the exact truth can, if ever, be ascertained, and the stipulation prevents the insurer from lying by and receiving the premiums during the life of the insured, and after his death, when the good faith and truth of his representations cannot be supported by his oath, contesting the policy upon the ground that the insured's representations were false or untrue. Such a stipulation is neither unreasonable nor contrary to public policy.

Another court, in upholding the clause, thus emphasized the reasons for its issuance by life insurance companies:[149]

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[147] (1887), 43 Hun (*N. Y.*) 61.

[148] *Ibid.*, pp. 65, 66. See also Wright *v.* Mutual Benefit Life Ass'n (1890), 118 *N. Y.* 237, 243. In Mutual Life Ins. Co. of N. Y. *v.* New (1909), 125 *La.* 41, the court ruled that "the gravity of the wrong cannot affect the incontestability of the policy after two years; for to permit it to affect the policy would be to create degrees of fraud."

[149] Mass. Benefit Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918, 924.

> The object to be secured in a contract of life insurance to mature at the death of the insured being a provision for his family, or for some person who has an insurable interest in his life, and the result in litigated cases with insurance companies being in many instances construed by the public to be simply a declaration, in effect, that the insured had paid for long years, at great sacrifice to himself, large sums in premiums, for the sole purpose of having it judicially ascertained after his death, when his voice could no longer be heard, that he had made a statement, the effect of which was to declare his contract void, . . .

As a result of the bad effects of such decisions, the companies were compelled to offer a contract which would, to a large extent, "remove these objections which had become so well settled in the public mind." After pointing out that the clause was really a short statute of limitations, the court continued:

> If the period so fixed is sufficient for the person, by the exercise of that care and diligence which an ordinary prudent person would give to his own business, to ascertain whether a fraud has been perpetrated upon him, then the contract would be valid, and would be enforceable after the period had elapsed in which discovery of fraud, if any existed, was to be sought; and, even if actual fraud had been perpetrated the party who was the victim of such fraud would be debarred of this defense. . . . and the duty is upon him to commence at once an investigation into the acts, conduct, and representations of the other party; . . . This does not violate in any way the well-settled principle that fraud is to be abhorred, vitiates everything it touches, and the person guilty of it is not to be countenanced in any way by the courts. While all this is true, it is equally well settled that a contract which has for its foundation a wilful fraud may become vitalized and enforceable by the negligence of the party who was the victim of the fraud.[150]

In no case, perhaps, has the economic justification of the clause received clearer analysis than in Kansas Mutual Life Insurance Company *v.* Whitehead, as expressed by Justice Barker:[151]

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[150] As stated in another case, "Unless the language be thus construed, it is impractical to put any reasonable interpretation on it. Unless it is the object and purpose of the provision to cut off all defenses arising out of the false statements of the applicant to obtain it, it is difficult to see what practical benefit the insured is to derive from it." Clement *v.* Insurance Co. (1898), 101 *Tenn.* 22, 29.

[151] (1906; *Ky.* Supreme Ct.) 93 S. W. 609, 610. See also Flanigan *v.* Federal Life Ins. Co. (1907), 231 *Ill.* 399; Weil *v.* Federal Life Ins. Co. (1914), 264 *Ill.* 425; Reagan *v.* Union Mut. Life Ins. Co. (1905), 189 *Mass.* 555; Drews *v.* Metropolitan Life Ins. Co. (1910), 79 *N. J.* L. 398; Murray

> This view does not exclude the consideration of fraud, but allows the parties to fix by stipulation the length of time which the fraud of the insured can operate to deceive the insurer. It recognizes the right of the insurer, predicated upon a vast experience and profound knowledge in such matters, to agree that in a stipulated time, fixed by himself, he can unearth and drag to light any fraud committed by the insured, and protect himself from the consequences. This clause is of vast importance and benefit, both to the insured and to the insurer. It enables the latter to increase his business by giving an assurance to persons doubtful of the utility of insurance, that neither they nor their families, after the lapse of a given time, shall be harassed with law-suits when the evidence of the original transaction shall have become dim, or difficult of retention, or when, perhaps, the lips of him who best knew the facts are sealed by death. That this consideration is a powerful inducement, especially to the poor and obscure, to take out insurance, cannot be doubted; and after the lapse of this reasonable time, it must, of necessity, be of great consolation to the insured to feel that the insurance money, to secure which he has, perhaps, so often indured privation, will be paid over to his family undiminished by court costs or lawyers' fees.
>
> To permit an insurance company to induce persons to insure their lives under the pleasing expectation of an incontestable clause, and then, when the insured is dead, to undertake, as against his family, to contest the policy on the ground of fraud, would be to permit the perpetration of as great fraud as the insured could possibly have committed in the obtention of the policy. There is no more public policy against the fraud of the insured than against the fraud of the insurer. The incontestable clause is upheld in law, not for the purpose of upholding fraud, but for the purpose of shutting off harassing defenses based upon alleged fraud; and, in so doing, the law merely adopts the certificate of the insurer that within a given time he can expose and render innocuous any fraud in the preliminary statement of the insured. . . . We are acquainted with no rule which forbids one party from relying upon his own acumen in protecting his interest in a proposed contract, and refusing to rely upon the statements or warranties of the opposing party.

The incontestable clause "gives to the insurer ample time to investigate all of the warranties of the insured, and after the lapse of this time it gives to the insured the quietude of heart which comes from a knowledge that the fund which the solicitude of love has provided for the objects of its bounty, is placed beyond the pale of question."

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v. State Mut. Life Ins. Co. (1901), 22 *R. I.* 524; Beard *v.* North State Life Ins. Co. (1915), 104 *S. Car.* 45; Southwestern Union Life Ins. Co. *v.* White (1916; *Tex.* Civ. App.), 188 S. W. 266.

(ii) Statutes.

Where a state has enacted that "all contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud . . . are against the policy of the law,"[152] such a statute has been held as not applying to the incontestable clause, since the purpose of the latter is not to *exempt* the insured from the consequences of fraud, but "simply to provide a shorter term for maintaining said claim than is prescribed by the statute of limitations. In other words, in my opinion, by said section the legislature did not condemn a contract that in the interest of repose and security would fix a reasonable limit for the time in which such defense might be successfully urged, but the intention was to preclude a contract that would altogether relieve either party of the consequences of his own fraud."[153]

4. *Wager—Public Policy.*

Incontestable clauses have generally been declared inoperative where their enforcement would violate the principle of insurable interest,[154] or would contravene public policy.[155] So, too, the courts would probably look with disfavor upon an insured's claim, where someone was substituted for him in the medical examination.[156]

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[152] Cal. Civ. Code, § 1668, quoted in case cited below.

[153] Angellotti, C. J., in Dibble *v.* Reliance Life Ins. Co. (1915), 170 *Cal.* 199, 205. As to incontestability of life insurance under provisions of a policy or of a statute, see 42 L. R. A. 247-262.

[154] Clement *v.* Insurance Co. (1898), 101 *Tenn.* 22; 5 L. R. A. (N. S.) 747. See also *supra,* ch. 5.

[155] *Infra,* ch. 9, execution.

[156] Although fraud is covered, "it is, however, evident that there is not only fraud here, but something more, which goes to the very essence of the contract. A policy has been written naming one person as the insured, while there has appeared before the company and, ordinarily also, has signed a part of the application, a different person, so that there is a real question as to who the person insured would be. . . . there has been no agreement as to the subject matter and no meeting of the minds, and according to a most elementary principle of law, this means that no contract has been made, because the parties have not had the same subject matter in view. Under such a condition of affairs, the incontestable clause could hardly be invoked, because no contract has been made. The side of a claimant is also certainly not helped by the fact that the failure to have the same subject matter in mind was due to deliberate deceit and fraud, practised by the one procuring the policy, on the basis of whose rights any claim must be made." Strong, *opus cit.,* p. 649.

5. *Miscellaneous.*

The incontestable clause does not relieve the insured of the necessity of paying his premiums. The clause has been interpreted as meaning that it shall be incontestable for causes other than the nonpayment of premiums.[157] Nor does the clause exclude the defense of failure to furnish proof of loss. This is not a contest of the policy, "but it is an assertion by way of defense of a failure to perform a condition precedent to recovery." [158] So also in a Pennsylvania court: "It [the incontestable clause] did not deny to the company the right to defend against an action brought upon the policy, except in so far as the defense might rest on a denial of the validity of the policy itself. All other lines of defense remained open to it." Otherwise it would make "not the policy only, but the right to recover, incontestable." [159]

But where a policy contained a clause providing "this policy becomes incontestable . . . one year from its date of issue," a federal court has ruled that the company cannot modify the amount of insurance for misstatement of age.[160] Nor can a reinsurer contest a policy which had become incontestable before the reinsurance, on the ground of false statements in the application.[161] And the incontestable clause "inures only to the benefit of the assured and his beneficiary, and there is no reason why it should be invoked by a third person, a stranger to the contract." [162]

6. *Reinstatement.*

The question of incontestability in relation to reinstatement will be considered in connection with that topic.[163]

Liberal Interpretation.

In accordance with the general rule of interpretation pertaining to policies in general, the courts have very liberally interpreted the incontestable clause. If a building contract provides for a reduction in the price in case of delay, with a stipulation that the contract shall be incontestable after one year, then in case of failure to complete the building within the time specified the owner can demand the reduction in the price upon proof of the delay. This is not a contest[164] of the contract, but an enforcement of its terms. But as a general rule in a life insurance policy the insurer can set up as a defense only those conditions specifically excepted in the incontestable clause itself, and the permitted exceptions were at first only non-payment of premiums and military or naval service in time of war. This attitude of the courts may be explained by the fact that the companies originally set up certain exceptions in the clause itself and the courts enforced only such exceptions despite the fact that other provisions existed in the policy with reference to suicide, increased hazard, disability, double indemnity, etc.[165] If the clause had merely stated that the policy shall be incontestable after a certain number of years, the courts would probably have ruled that it was intended merely to exclude any dispute over the validity of the policy, *i. e.,* to prevent defenses based upon misrepresentation or fraud in procuring the policy.[166]

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[157] Thompson *v.* Fidelity Mut. Life Ins. Co. (1906), 116 *Tenn.* 557, 571. See also 6 L. R. A. (N. S.) 1039.

[158] Illinois Bankers' Life Ass'n *v.* Byassee (1925), 169 *Ark.* 230, 234.

[159] Brady *v.* Prudential Ins. Co., Appellant (1895), 168 *Pa.* 645, 650.

[160] Arnold *v.* Equitable Life Assur. Soc. of U. S. (1915), 228 *F.* 157.

[161] Federal Life Ins. Co. *v.* Petty (1912; *Ind.* Supreme Ct.), 97 N. E. 1011.

[162] Prudential Ins. Co. *v.* Mohr (1911; U. S. C. C.), 185 *F.* 936, 939.

[163] *Infra,* ch. 10.

1. *Beginning of Period of Incontestability.*

There is a conflict of opinion as to the beginning of the period limited by the incontestable clause, "where the beginning date is not definitely stated or fixed. Some courts hold that such periods must be computed from the date of the policy; others, from the date of delivery and acceptance, where different from the date which the policy bears."[167] The question came before the United States Supreme Court in 1923, and because of ambiguity, the insured was favored, and the policy was held incontestable.[168]

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[164] In the case of a life policy, a contest must be by court action. "This may be either a bill in equity asking for the cancellation of the policy, or by plea or answer in a suit brought on the policy." Vance, *opus cit.,* p. 823. So, by securing a release of its liability, a life insurance company did not "contest" the policy within the meaning of the clause. Therefore, the beneficiary could establish his claim after the lapse of the time stipulated in the clause. Parton *v.* Metropolitan Life Ins. Co. (1927), 221 *N. Y.* S. 610.

[165] Vorys, A. I., "The Development of the Incontestable Clause," *P. A. L. I. C.* (1913-21), Paper No. 47, pp. 1-4. See also North American Life Assur. Co. *v.* Elson (1903), 33 C. S. C. Rep. (*Canada*) 383.

[166] Vorys, *opus cit.,* p. 3.

[167] Ebner, Adm'r, *v.* Ohio State Life Ins. Co. (1918), 69 *Ind.* App. 32, 41. See also, L. R. A. 1917 B 103; L. R. A. 1915 F. 703.

2. *Suicide.*

In general, if there is a clause excepting suicide and an incontestable clause also, the latter will govern the validity of the policy. In one of the early and leading cases,[169] the policy provided for incontestability after five years for any cause. It also provided that suicide was a risk at no time assumed by the association. The court held that after five years the defense of suicide could not be set up. In the same year a suit involving substantially the same facts came before a Minnesota court.[170] The company contended there were two distinct risks, one suicide (not accepted), and another, other death, and that the incontestable clause was not applicable because the company was not contesting the policy, but only proposing to pay according to its terms. The court dissented, and held the company liable. In another frequently cited case[171] the *application* contained a clause excluding suicide, but the *policy* contained an incontestable clause. In upholding the policy the court stated that the "policy must be liberally construed in favor of the assured, so as not to defeat, without plain necessity, his claim for indemnity."[172] In case of conflict the provisions of the policy govern over those of the application, "and the ingenuity of the author should not be allowed to work a fraud or injustice upon those who confided in the belief that upon payment of premiums . . . they, after the expiration of two years, had an incontestable policy."[173]

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[168] Mutual Life Ins. Co. of N. Y. *v.* Hurni Packing Co. (1923), 263 *U. S.* 167. The facts were these. The policy was applied for Sept. 2, 1915, executed Sept. 7, antedated Aug. 23, and delivered Sept. 13. Future premiums were to be paid on Aug. 23, but the policy provided that it was not in effect until delivered to the insured in good health. The court fixed the date as of Aug. 23, for the purposes of the incontestable clause. The same rule was enforced in Meridian Life Ins. Co. *v.* Milam (1916), 172 *Ky.* 75, 78.

[169] Mutual Reserve Fund Life Ass'n *v.* Payne (1895; *Tex.* Ct. Civ. App.), 32 S. W. 1063.

[170] Mareck *v.* Mutual Res. Fund Life Ass'n (1895), 62 *Minn.* 39.

[171] Goodwin *v.* Provident Sav. Life Assur. Soc. (1896; *Iowa* Supreme Ct.), 66 N. W. 157.

[172] *Ibid.*, p. 159.

[173] *Ibid.*, p. 162. And in Indiana National Life Ins. Co. *v.* McGinnis (1913), 180 *Ind.* 9, 16, the court interpreted the clause as precluding "every defense to the policy other than the defenses excepted in the provision itself." See also Fore *v.* N. Y. Life Ins. Co. (1929), 180 *Ark.* 536; Royal Circle *v.*

3. *The Monahan Case.*

In 1918 the important issue arose in Illinois whether the period of contestability stipulated, implied that the insured must be alive during that time. The insured died within two years, but no claim was made upon the company until after the expiration of the time specified. The court thus explained its decision in favor of the insured:[174]

> There is nothing in this clause to indicate that the parties were contracting that plaintiff in error should have two years during the lifetime of Fay [the insured] in which to investigate and determine whether false statements had been made in the application for the insurance. Plaintiff in error reserves two years' time in which to make such investigation and to determine whether there has been such a breach of warranty as would authorize it to rescind its contract.
>
> The beneficiary has an interest in the contract, and as between the insurer and the beneficiary all the rights and obligations of the parties are not determined as of the date of the death of the insured. The incontestable clause in a policy inures to the benefit of the beneficiary after the death of the insured as much as it inures to the benefit of the insured himself during his lifetime. . . . In case of a breach of warranty under this particular clause the insurer must assert its claim within the two-year period, whether the insured survives that period or not, either by affirmative action or by defense to a suit brought on the policy by the beneficiary within the two years.[175]

The United States Supreme Court has adopted the same rule.[176] The company contended that the policy was incontestable only in the event of the death of the insured *after* the period mentioned in the clause. The court pointed out that the argument was ingenious but fallacious, since it ignored the fundamental purpose of insurance, which is to protect the beneficiary. It would read into the clause

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Achterrath (1903), 204 *Ill.* 549; Supreme Court of Honor *v.* Updegraff (1904), 68 *Kan.* 474; Patterson *v.* Natural Prem. Mut. Life Ins. Co. (1898), 100 *Wis.* 118. The case of Starck *v.* Union Cent. Life Ins. Co. (1890), 134 *Pa.* 45, is sometimes cited contra, but in this case the court was called upon to construe the Ohio Statute (*supra,* note 124) which excluded only "errors, omissions, or misstatements" in the application. See further Couch, *opus cit.,* vol. 6, p. 4654, § 1262 n.

[174] Monahan *v.* Metropolitan Life Ins. Co. (1918), 283 *Ill.* 136, 140.

[175] *Ibid.,* p. 141.

[176] Mutual Life Ins. Co. of N. Y. *v.* Hurni Packing Co. (1923), 263 *U. S.* 167, 176. See also Malanti *v.* Metropolitan Life Ins. Co. (1926), 216 *N. Y. S.* 643; Sexton *v.* Equitable Life Assur. Soc. of U. S. (1927), 224 *N. Y. S.* 63.

a condition not expressed; the clause did not say incontestable, if living.[177]

As a result of the effect of decisions such as the above, and of the tendency of the courts to exclude as a defense anything not mentioned in the incontestable clause itself, the Committee on Laws and Legislation of the National Convention of Insurance Commissioners recommended on December 4, 1922, the passage of the following resolution: [178]

> Resolved, That the several Commissioners recommend to their respective Legislatures the enactment of the following:
>
> Be it enacted, etc.:
>
> That the policy of insurance together with the application therefor, a copy of which application shall be endorsed upon or attached to the policy and made a part thereof, shall constitute the entire contract between the parties and shall be incontestable after *it shall have been in force during the life time of the insured for* two years from its date, except for nonpayment of premiums and except for violations of the policy relating to the naval or military service in time of war and *at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted.*

Recent Tendency.

The trend of recent decisions has been to give weight to other provisions in the policy as well as to the incontestable clause itself. As early as 1916 the courts of North Carolina ruled that by the use of the term incontestable, "the parties must necessarily mean that the provisions of the policy will not be contested, and not that the insurance company agrees to waive the right to defend itself against a risk which it never contracted to assume."[179] In 1925, the federal courts expressed the same view in Sanders *v.* Jefferson Standard Life Insurance Company, by District Judge Holmes:[180]

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[177] In order to protect its interests where there is "no party in existence [*e. g.,* no administrator has been appointed] against whom it could begin suit," the company must sue in equity to rescind the policy, legal remedy by defense on the policy being inadequate. Ramsey *v.* Old Colony Life Ins. Co. (1921), 297 *Ill.* 592, 603; Travelers' Ins. Co. *v.* Snydecker (1926), 215 *N. Y. S.* 276. See also *supra,* note 164. But where the clause contains "during the lifetime of the insured," the company cannot file a bill in equity, because it has an adequate defense at law. Chicago National Life Ins. Co. *v.* Carbaugh (1929), 337 *Ill.* 483.

[178] *N. C. I. C.* (1923), vol. 54, p. 17. Such legislation has been enacted in some of the states. *Supra,* notes, 122, 125-129. Of 50 leading companies, 24 have inserted in their clauses, "during the lifetime of the insured" or words having a similar meaning; 7 of these otherwise provide for a two-year period. *Best's Illustrations,* N. Y. (Sept. 1930).

> An incontestable clause in a policy of insurance providing for one of two or more benefits in case of death, accident, or disability cannot be construed to prohibit the company from showing the particular alternative or disconnected benefit which the insured is entitled to receive. The defendant is not contesting the policy by showing facts that determine which of separate, but not necessarily cumulative, provisions of the policy apply.

A similar conclusion has been reached by the New York courts in a case involving the right of a company to issue a rider excluding the aviation hazard except as a fare-paying passenger. The superintendent refused approval on the ground that such a rider was a violation of

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[179] Scarborough *v.* American Nat'l Ins. Co. (1916), 171 *N. C.* 353. This was quoted with approval in Jolley *v.* Jefferson Standard Life Ins. Co. (1930; *N. Car.* Supreme Ct.), 154 S. E. 400, 401, in which the court held that the incontestable clause does not modify, extend, or enlarge the coverage clause, and that exclusions in the double indemnity clause were effective. The above quotation is also found in Hearin *v.* Standard Life Ins. Co. (1925; Dist. Ct., E. D. Ark.), 8 *F.* (2d) 202. Here the policy contained one-year suicide and incontestable clauses, the latter not excepting suicide. The insured committed suicide within the year, but the beneficiary did not contest the policy until after one year. The court ruled that the risk of suicide had never attached, and released the company from liability. With similar facts before it, the Texas Court of Civil Appeals reached the same decision: "On the contrary, the insurer is standing upon the letter and spirit of the contract as written; is seeking to uphold, and not defeat, the contract, the validity of which both parties are seeking to maintain. In short, the insurer is not 'contesting' the policy at all, but is asserting its validity in both form and substance, and the provision of incontestability is inapplicable." Howard *v.* Missouri State Life Ins. Co. (1926; *Tex.* Ct. Civ. App.), 289 S. W. 114, 115. See also McCreighton *v.* American Catholic Union (1919), 71 *Pa.* Superior Ct. 332, 335: "It is not the claim presented by the assured, irrespective of the cause of death, which is made incontestable; it is merely the validity of the policy, as an obligation binding upon the company. . . . The effect of the stipulation was not to change the covenants of the contract at the expiration of two years." This was cited with approval in Sipp, Aplnt., *v.* Philadelphia Life Ins. Co. (1928), 293 *Pa.* 292, 297, a case holding that the incontestable clause and one fixing the amount of recovery in case of misstatement of age are not inconsistent. See further Diamond et al *v.* N. Y. Life Ins. Co. (1930; Dist. Ct., N. D., Ill. E. D.) 42 *F.* (2d) 910; Fore *v.* N. Y. Life Ins. Co. (1929), 180 *Ark.* 536, dissenting opinion, Smith J., two others concurring, pp. 541, 546.

[180] (1925; Dist. Ct., S. D.), 4 *F.* (2d) 555, 558.

Section 101 (2) of the Insurance Law.[181] Chief Justice Cardozo thus expressed the view of the court: [182]

> The provision that a policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years is not a mandate as to coverage, a definition of the hazards to be borne by the insurer. It means only this, that within the limits of the coverage, the policy shall stand, unaffected by any defense that it was invalid in its inception, or thereafter become invalid by reason of a condition broken. Like questions have arisen in other jurisdictions and in other courts of this State. There has been general concurrence with reference to the answer.
>
> A provision for incontestability does not have the effect of converting a promise to pay on the happening of a stated contingency into a promise to pay whether such contingency does or does not happen. . . . Where there has been no assumption of the risk, there can be no liability.
>
> The kind of insurance one has at the beginning, that, but no more, one retains until the end.

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[181] Matter of Metropolitan Life Ins. Co. *v.* Conway, as Supt. of Ins. (1930), 252 *N. Y.* 449.

[182] *Ibid.,* pp. 452-454, with numerous citations.

CHAPTER VIII

WRITING OF THE POLICY (*Concluded*)

Payment of the Premium

The promise of the company under a life insurance policy is given in consideration of the payment of the premium by the insured. Generally, the insurer is not bound "until the insured has either paid or promised to pay the first premium."[1] The amount of premium is stated in the policy, and this was customary concerning even the early policies.[2] The policy frequently states that it "is issued in consideration of the application and of the payment of the first premium."[3] It is usual also to incorporate in the policy a provision to the effect that "all premiums are payable on or before their due date either at the Home Office of the Company or to any agent of the Company, but only on delivery of a receipt signed by the Treasurer of the Company and countersigned by the person receiving the premium."[4] At one time it was the practice of some companies to require payment to be made in gold.[5]

While life insurance may be purchased by single premiums, this method is impractical from the standpoint of the great majority of policyholders.[6] Even annual premiums are inconvenient at times, so that the companies early provided for their semi-annual or quarterly payment at the option of the insured.[7] During the past fifteen years monthly premiums have been growing in popularity.[8] Shortly after the inception of the mutual companies it was a common practice on the part of many of them to accept payment partly in cash and partly by note.[9] And some years later, at least one company granted a rebate of thirty per cent of the first two premiums if the policy remained in force.[10]

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[1] Vance, W. R., *Handbook of the Law of Insurance,* West. Pub. Co., St. Paul, 2d Ed. (1930), p. 260. For a discussion of consideration as applied to insurance contracts, see Physicians' Defense Co. *v.* Cooper (1912), 199 *F.* 576.

[2] Appendices I, IX.

[3] Appendix X.

[4] Appendices X, XIV.

[5] Moore, C. I. D., *The Pacific Mutual Life Insurance Company,* Los Angeles (1928), p. 133.

[6] Huebner, S. S., *Life Insurance,* Appleton, N. Y. (1928), pp. 8, 9, 160.

[7] Appendix IX. *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia* (1922), p. 13. This practice is of course common, a slight charge being made for loss of interest and additional collection expense. Maclean, J. B., *Life Insurance,* McGraw-Hill, N. Y. (1924), pp. 85, 86. The common practice is to deduct unpaid quarterly or semi-annual premiums upon payment of the claim, but some companies have recently abolished this custom. Elson, J. S., "The Development of Life Insurance in the United States During the Last Ten Years," *T. A. S. A.* (1926), vol. 27, p. 359.

Payment of the First Premium.

In many cases the policy acknowledges the receipt of the first premium.[11] Such recital of payment is merely evidentiary and may be refuted by proper testimony.[12] The rule has been thus stated by Justice Emott: [13]

> I am not prepared to assent to the proposition stated by the learned judge who delivered the opinion in the court below, that the defendants are estopped by the acknowledgement in the policy, from denying the receipt of the premium. The mere possession, by the insured, of a policy containing such an acknowledgement, under such circumstances as were proved in this case, did not furnish conclusive evidence that the premium had been paid.

As a general rule the insurance company is held liable, but it can sue for the payment of the premium.[14] Where, however, the policy expressly states that it shall not become binding until the first premium has been paid, such agreement is binding, and payment must have been made or waived before the contract is in effect.[15]

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[8] *Ibid.*

[9] For a discussion of the premium-note system, see *infra.*

[10] The rebate was offered to get new lives to replace those lost through withdrawal. Thus, in effect, the rebate was paid by those that surrendered their insurance. *Insurance Monitor* (1878), vol. 26, p. 679; *ibid.* (1879), vol. 27, p. 29. The rebate was shortly reduced to fifteen per cent. *Ibid.,* p. 130. The practice caused considerable discussion.

[11] Appendix X.

[12] Ansin *v.* Mutual Life Ins. Co. of N. Y. (1922), 241 *Mass.* 107, 111.

[13] Sheldon *v.* The Atlantic Fire and Marine Ins. Co. (1863), 26 *N. Y.* 460, 462. This case contains a review of the early decisions on the subject.

[14] Vance, *opus cit.,* p. 229.

[15] *Ibid.,* p. 224. In the case of De Groot *v.* Mutual Life Ins. Co. of N. Y. (1923), 179 *Wis.* 202, 208, the company was estopped from denying the validity of the policy. By Eschweiler, J. ". . . having permitted delivery of a policy which contained on its face an express acknowledgment of the receipt of the first premium, the insurer cannot afterwards, for the purpose of denying the existence of the contract, assert the contrary. Such a statement in a contract of this kind must be held to be more than a mere receipt open to explanation or contradiction by oral testimony and be regarded as a solemn admission that the contract is in effect presently and upon such delivery and acceptance as here shown as a valid and subsisting contract."

Delivery of Policy While Insured Is in Good Health.

Formerly it was practically the universal custom to provide in the policy that the risk did not attach "until delivery to the applicant and acceptance by him during his life time and good health, and the actual payment of the required premium." [16] In 1905, this stipulation was imposed by each of fifty-one representative companies.[17] The requirement is a fair one,[18] and its omission from the policies of certain companies has been regarded with disfavor.[19] As a general rule, the courts will enforce such a provision, although some appear not to hold this view.[20] Liberality is entering here also, courts holding that a company may waive the stipulation.[21] One authority has thus expressed the general rule respecting the commencement of the risk: [22]

> In conclusion I would say that no general rule can be stated as to when the risk commences in the case of a life insurance policy owing not only to

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[16] Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. of Polit. & Soc. Sci., Phila. (1905), p. 35.

[17] *Ibid.,* p. 40.

[18] Fouse, L. G., "The Policy," *The Business of Insurance,* H. P. Dunham, Ed., Ronald Press, N. Y. (1912), 3 vols., vol. 1, p. 304. "Until he has actually made payment of the premium, the applicant for insurance is in a position to temporize and procrastinate, and he often does. As a matter of justice his delay should be at his own risk and not at the risk of the policyholders."

[19] Moir, Henry, "Liberality of Modern Policies," *T. A. S. A.* (1911), vol. 12, p. 190.

[20] Ames *v.* N. Y. Life Ins. Co. (1922), 154 *Minn.* 111. From the syllabus. "After the application was accepted and the policy issued, but before it was delivered and before the first premium was paid, the insured became seriously ill. In ignorance of the fact, the policy was delivered and a check for the premium received. It is held that the policy could not be avoided on the ground that the insured, or his representative, was bound to disclose the change in his physical condition and wrongfully failed to disclose it." For the opposite opinion see Ansin *v.* Mutual Life Ins. Co. of N. Y. (1922), 241 *Mass.* 107. This seems to be the better view, the Ames case having been criticized as "requiring the insurer to consummate a contract of insurance on the life of a dying man," thus in substance depriving "the insurer of a valuable right for which he has expressly contracted." 36 *Harv. L. Rev.* (1922), 884, 885, relying on McKenzie *v.* Northwestern Mut. Life Ins. Co., 26 *Ga.* App. 225.

[21] Patterson, E. W., "The Delivery of a Life-Insurance Policy." (1919-20) 33 *Harv. L. Rev.* 198, 222. This article contains a minute analysis of the subject of policy delivery.

[22] Coke, J. A., Jr., "The Commencement of the Risk in the Case of a Life Insurance Policy," *P. A. L. I. C.* (1913-21), paper 51, p. 17. See also the annotation L. R. A. 1916 F. 171, on the effect of a stipulation in the application or policy of life insurance that it shall not become binding unless delivered to the assured while in good health. See further, *supra,* ch. 7, concealment.

the differences in the provisions now in use by the various Companies, but also to the fact that the doctrine of waiver so often upsets the best laid plans. It can, however, be safely said that the standard provisions on the subject are held valid by the great weight of authority and that where not held to have been waived that the risk commences strictly in accordance therewith.

The great weight of authority is also to the effect that such provisions cannot be waived by a soliciting agent of the Company, certainly in those cases where his limited authority is brought to the applicant's attention by the terms of the application.

Where the agent's limited authority is not so brought to the attention of the applicant, or where the agent has no instructions on the subject, the cases are not in accord, but the better doctrine seems to be that he does not waive such provisions even by delivering the policy to such sick applicant. Such decisions seem founded upon both common sense and justice. Of course if the soliciting agent does not know of the sickness no question of waiver seems involved.

Return of Premium.

Unless otherwise provided by statute, or in the policy itself, the general rule is that the premium is earned when the risk attaches, and no return is available to the insured unless the contract is terminated by the insurer.[23] The issue was first raised in Tyrie *v.* Fletcher,[24] which involved a marine policy excluding loss by capture. The vessel was captured and the insured claimed a return of the premium for the unexpired term. Lord Mansfield delivered the opinion of the court: [25]

> And I take it there are two general rules established, applicable to this question: The first is, That where the risk has not been run, whether its not having been run was owing to the fault, pleasure, or will of the insured, or to

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[23] Vance, *opus cit.,* p. 318. "Where the insurer wrongfully repudiates a life policy before its maturity, the insured or beneficiary may, in most jurisdictions, maintain an immediate action at law for damages. Most courts will allow the plaintiff at his option to recover in such action all premiums paid with interest from date of each payment, though in some jurisdictions the insured is allowed to deduct the reasonable value of the protection afforded; or where the insured's health is such at the time of the breach that this measure of damages will fail to compensate the plaintiff for his loss, he may be given such sum as would enable him to procure a like policy in another company. Instead of bringing the action at law, the plaintiff may bring a bill in equity for the restoration of the contract; or he may tender the premiums and await the maturity of the policy before any action is begun." *Ibid.,* p. 325.

[24] (1777), Cowp. (*Eng.*) 666.

[25] *Ibid.,* pp. 668, 669.

> any other cause, the premium shall be returned: Because a policy of insurance is a contract of indemnity. The underwriter receives a premium for running the risk of indemnifying the insured, and whatever cause it be owing to, if he does not run the risk, the consideration, for which the premium or money was put into his hands, fails, and therefore he ought to return it. 2. Another rule is, that if the risk of the contract of indemnity has *once* commenced, there shall be no apportionment or return of premium afterwards. For though the premium is estimated, and the risk depends upon the nature and length of the voyage, yet if it has commenced, though it be only for twenty-four hours, or less, the risk is run; the contract is for the whole entire risk, and no part of the consideration shall be returned: . . .
>
> In such policies [one-year life] there is a general exception against suicide.—If a person puts an end to his own life the next day, or a month after, or at any period within the twelve months, there never was an idea in any man's breast that part of the premium should be returned.

Where, however, the policy never had a legal existence, the insured is entitled to a return of the premium, if paid in good faith, with no intention of cheating the company or practicing a fraud upon it.[26] The circumstances under which the premium is returnable have been generalized as follows:[27]

> (1) Where the risk has never attached, as where the policy has not been delivered, . . . or, in marine insurance, where the policy is made to cover a future contingency, such as a voyage to a certain port, and the voyage was never commenced or undertaken, and no risk run. . . . (2) Where the policy is void for illegality, and the parties are not in pari delicto. . . . (3) Where

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[26] De Loach *v.* Ozark Mut. Life Ins. Co. (1921), 148 *Ark.* 414, 419; Hogben *v.* Metropolitan Life Ins. Co. (1897), 69 *Conn.* 503; Fisher *v.* Metropolitan Life Ins. Co. (1894), 160 *Mass.* 386, 391.

[27] O'Connor Transportation Co., Inc., *v.* Glens Falls Ins. Co. (1922), 197 *N. Y. S.* 549, 550. A policy having been held void for breach of warranty, the insured sued to recover premiums not only on the current policy, but also on former policies under which no loss had occurred. By Davis, J.: "Where the policy has expired, and there has been no loss, and no question of the validity of the policy has arisen, it seems to me that it would be against public policy and good morals to permit a recovery of the premium on the ground that the policy had at all times been invalid because the insured had made or taken advantage of a warranty therein which was not true. Such a doctrine would leave entirely uncertain the resources of any insurance company, because it could never know how many secret or latent infirmaties were attached to its policies. Nor how many premiums which it had received, it was actually entitled to retain and count as assets." The Iowa courts seem to be isolated proponents of the contrary rule, as expressed in Waller *v.* Northern Assurance Co., 64 *Iowa* 101.

the insured has been induced to take out a policy by false representations on the part of the insurer, and the assured has rescinded. . . . (4) Where there were certain representations or warranties made by the insured, or on his behalf, not in bad faith, but not true in fact, or there were provisions in the policy unknown to insured, rendering the policy void, which defenses the insurer asserts to defeat a claim on the policy . . .

Renewal Premiums.

1. *Not a Debt.*

In life insurance the payment of premiums subsequent to the first is optional with the insured. The latter nowhere agrees to pay future premiums; clearly the annual premium is not a debt.[28] But the insured by his conduct may render himself liable for subsequent premiums in certain cases.[29]

2. *Penalty for Nonpayment.*

Originally the failure to pay any premium resulted in the forfeiture of all rights under the contract; no inherent rights exist whereby the insured is entitled to any surrender value.[30] Such forfeitures are not penalties, and equity will not relieve against them.[31] But the failure to pay premiums may be waived by the company, since the breach merely renders the policy voidable, and not void.[32]

3. *Use of Dividends to Pay Premiums.*

Ordinarily dividends are available for the payment of premiums. Where such is the case, a failure on the part of the company to notify the insured of the amount of the dividend will be interpreted by the courts as a waiver of prompt payment.[33] But a dividend which has not been declared is not available out of surplus to pay premiums.[34]

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[28] Worthington *v.* Charter Oak Life Ins. Co. (1874), 41 *Conn.* 372, 416; Goodwin *v.* Mass. Mut. Life Ins. Co. (1878), 73 *N. Y.* 480, 487: "According to the terms of the policy there is no promise to pay, and it rests with the insured to say how long he will continue it." See also Mutual Life Ins. Co. *v.* Chattanooga Savings Bank (1915), 47 *Okla.* 748, 754.

[29] "In life insurance the premium becomes a debt only when, in the case of the first premium, the contract has become binding, and, in the case of subsequent premiums, when the insurer has continued the insurance, after maturity of the premium, in consideration of the insured's express or implied promise to pay." Vance, *opus cit.,* p. 264.

[30] For a discussion of surrender values, see *infra,* ch. 10.

[31] N. Y. Life Ins. Co. *v.* Statham (1876), 93 *U. S.* 24, 31.

[32] Mutual Life Ins. Co. *v.* Chattanooga Savings Bank (1915), 47 *Okla.* 748, 759.

4. *Payment by Note.*

Where part of the premium has been paid by note, a failure of the insured to pay interest on the note will generally permit the company to forfeit the policy.[35] As stated by one writer, "by the probable weight of authority, a provision in a paid-up policy that it shall be forfeited for nonpayment in advance of interest on premium notes is held valid, and will not be relieved against in equity." [36]

5. *Premium Notice.*

In the absence of agreement or statutory enactment the company is under no obligation to notify the insured of the date on which his permiums are due.[37] It is now, however, the general custom on the part of life companies to mail a notice to the insured, stating the amount of the premium and its due date. Indeed, various states have enacted legislation, making compulsory the mailing of such notice.[38] But where the company has fully complied with the requirements of the law by proper addressing and mailing, it is immaterial whether the notice is received by the insured.[39]

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[33] Owen *v.* N. Y. Life Ins. Co. (1921), 126 *Miss.* 878, 893: "Under these circumstances it was clearly the duty of the company to notify the insured of the amount of the dividend, in order that he might know the amount in cash he was required to pay to discharge the premium, and if this notice was not given the company thereby waived the prompt payment of the premium and cannot declare a forfeiture."

[34] Mutual Life Ins. Co. of N. Y. *v.* Girard Life Ins. Co. (1882), 100 *Pa.* 172.

[35] Holman *v.* Continental Life Ins. Co. (1886), 54 *Conn.* 195; Goodwin *v.* Mass. Mut. Life Ins. Co. (1878), 73 *N. Y.* 480.

[36] Vance, *opus cit.*, p. 285, footnote. But in the absence of express agreement, failure to pay a note given for premiums will not forfeit the policy, "but merely gives the insurer a right of action on the note." *Ibid.*, pp. 309-313.

[37] Smith *v.* National Life Ins. Co. (1883), 103 *Pa.* 177, 185: "It is contended that the failure of the defendant company to send the customary notice excused the plaintiff's default. By the terms of the contract it was certainly the duty of the assured to pay on the day stipulated whether he received notice or not; he knew, or was bound to know, the several dates at which the premiums were due, and his neglect to pay was at his own peril; the company was under no obligation to give the notice."

[38] New York passed such a law in 1876. N. Y. L. (1876), ch. 341, § 1. After several amendments and changes, it forms section 92 of the present insurance law. See also Kan. Ins. Code (1927), §§ 40-410, 40-411; La. L. (1906), act 68; Mass. Gen. L., ch. 175, § 140. See further Davis, A. J., "A Discussion of Statutes and Cases Relating to Premium Notices," *P. A. L. I. C.* (1913-21), paper 36, pp. 1-26.

Grace.

As a general rule, the payment of the premium for a life insurance policy may be made at any time before midnight of the day on which it is due. It must be made at the place and on the day specified, usually in money, although any consideration, including services, will bind the company unless otherwise stipulated.[40] Where the premium falls due on Sunday, the insured is entitled to make payment at any time during the next day.[41] Formerly a difference existed between policies expressed to be effective for a certain period "from the day of the date" and "from the date," [42] but this distinction was thus removed by Lord Mansfield in a reasoned decision, involving the term of a lease:[43] "In grammatical strictness, and in the nicest propriety of speech that the *English* language admits of, the sense of the word "from" must always *depend* upon the *context* and *subject matter,* whether it shall be construed *inclusive,* or *exclusive* of the *terminus a quo*: . . ."

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[39] McConnell *v.* Prov. Sav. Life Assur. Soc. (1899; C. C. A. 6), 92 *F.* 769.

[40] Vance, *opus cit.,* p. 266. In the absence of specific agreement, the policy terminates at midnight. Penn Plate Glass Co. *v.* Spring Garden Ins. Co. (1899), 189 *Pa.* 255. But policies may stipulate otherwise, as, for example, noon (see Appendix IX) or at sunset (Appendix VI). An early case concerned a vessel lost on the day the policy expired. The policy expired at noon, but it was after noon at the place of accident, although before noon at the place of contract. By Wells, J.: "The contract of insurance was for a year, and if the time of noon should be taken, at a place, east or west longitude of Portland, on the day when the risk expired, the period of time would be lessened or extended, and might be less or more than a year. . . . The parties must be considered, as regarding the meridian of the place, where the contract is made, unless some other one is mentioned in it." Walker *v.* Protection Ins. Co. (1849), 29 *Me.* 317, 321. "At the present time premiums on most policies are payable before 3 P. M. of the due date, although it is customary to accept the payment at any time before the closing of the offices, unless death has occurred after the time prescribed in the policy. This question does not often occur with respect to the due date, but it has sometimes arisen with respect to the termination of the days of grace." E. P. Huttinger.

[41] Thus, if the day of payment falls on Sunday, at noon, the premium is not payable until Monday, at noon, even if the insured dies on Sunday afternoon. Hammond *v.* American Mut. Life Ins. Co. (1858), 10 Gray (*Mass.*) 306. But where a premium must be paid at noon, this does not apply, unless specifically stated, to a premium note which may be paid during the whole day, in accordance with the rule for such instruments. Leigh *v.* Knickerbocker Life Ins. Co. of N. Y. (1874), 26 *La.* Ann. 436. And a holiday is a business day, if so agreed, except for certain transactions. Owen *v.* Howard Ins. Co. (1888), 87 *Ky.* 571, 577.

[42] Sir Robert Howard's Case (1700), 2 Salk. (*Eng.*) 625: "A policy of assurance was made to insure the life of Sir Robert Howard for one year, from the day of the date thereof; the policy was dated on the 3d day of September, 1697. Sir Robert died on the 3d day of September, 1698, about one o'clock in the morning. *Et per Holt,* C. J. In an action hereupon it was ruled at the sittings at Guildhall. 1st, That *from the day of the date* excludes the day, but *from the date* includes it, so that the day of the date is

At the present time, where a policy covers from a certain day, that day is excluded from the computation.[44]

1. *Development in England.*

Because of the insured's failure promptly to pay his premium, forfeiture frequently resulted. Accordingly there developed the practice of allowing a period of grace, a custom probably borrowed from the Law Merchant. This was a body of rules and principles established by merchants several centuries ago to guide them in their transactions.[45] One of its provisions "was 'days of grace,' being certain days (usually three) allowed the acceptor of a bill or the maker of a note in which to make payment in addition to the time contracted for by the bill or note itself."[46] Allowed first by courtesy,

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excluded. 2dly, That the law makes no fraction in a day, yet in this case he dying after the commencement, and before the end of the last day, the insurer is liable, because the insurance is for a year, and the year is not complete till the day be over; yet if A be born on the third day of September, and on the second day of September twenty-one years afterwards he makes his will, this is a good will; for the law will make no fraction of a day, and by consequence he was of age."

[43] Pugh *v.* Duke of Leeds (1777), Cowp. (*Eng.*) 714, 717. This contains a review of the earlier cases, all of which were held unsatisfactory. Policies were sometimes written "both days inclusive." Appendix III. See also Angell, J. K., *A Treatise on the Law of Fire and Life Insurance,* Boston (1854), pp. 93, 94.

[44] Thus a policy covering from Feb. 14, 1868, until Aug. 14, includes Aug. 14. Isaacs *v.* The Royal Ins. Co. (1870), L. R. 5 Exch. (*Eng.*) 296. See also Walker *v.* The Protection Ins. Co. (1849), 29 *Me.* 317; Walker *v.* John Hancock Mutual Life Ins. Co. (1896), 167 Mass. 188. The rule was thus stated in Meridian Life Ins. Co. *v.* Milam (1916), 172 *Ky.* 75, 78: "The rule in regard to the computation of time is well settled, and is this: When the computation is to be made from the act done, the day on which the act is done must be included; but, when the computation is to be made from the day itself, and not from the act done, then the day on which the act is done must be excluded from the computation."

[45] Seay, W. F., "Grace," *P. A. L. I. C.* (1913-21), paper 59, p. 1.

[46] *Ibid.* "In 1882 the English Bill of Exchange Act expressly recognized the three days of grace. By various code enactments the days of grace have been abolished by most, if not all, of the European nations, with the exception of England; hence, its existence is now practically among the English

and then by custom, days of grace eventually became an integral part of the contract itself, recognized as such by the courts.[47]

Among the early life insurance associations the grace privilege was much less liberally construed than at present. In the Amicable Society the period extended for three months.[48] The section of the General Regulations of the Equitable Society dealing with this point was as follows:[49]

> 19. If any premium remain unpaid 30 days after the time stipulated in the policy for payment thereof, such policy becomes void: but if the defaulter shall, within 3 calendar months after the time so stipulated (the person on whose life the assurance was made being then alive and in good health), pay the said premium, together with the added sum of 10 s. for every £100 assured by such policy, then such policy is revived, and continues in force to all intents and purposes whatsoever.

Legally, no attention seems to have been paid to the grace period in life insurance until the case of Want *v.* Blunt[50] presented the issue in 1810. A tender of the quarterly premium had been made after the death of the insured, but within a fifteen-day grace period allowed by the society. Lord Ellenborough delivered the opinion of the court to the effect that "a member insuring, having died, leaving a quarterly payment over due at the time of his death, the policy expired; and that a tender of the sum by the member's *executor,* though made *within 15 days after it became due,* did not satisfy the requisition of the policy and the rules of the society, which required

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speaking people only. The Uniform Negotiable Instruments Act has been passed in most of the states of the union and practically all have abolished the three days of grace."

[47] Bank of Washington *v.* Triplett (1828), 1 Pet. (*U. S.*) 25, 31. By Marshall, Ch. J.: "The allowance of days of grace is a usage, which pervades the whole commercial world. It is now universally understood to enter into every bill, or note of a mercantile character, and to form so completely a part of the contract, that the bill does not become due, in fact or in law, on the day mentioned on its face, but on the last day of grace."

[48] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. & C. M. Goodsell, N. Y. (1871), vol. 2, p. 176. See also Babbage, Charles, *A Comparative View of the Various Institutions for the Assurance of Lives,* London (1826), table facing p. 1.

[49] Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1886-87), vol. 26, p. 9.

[50] (1810), 12 East (*Eng.*) 183.

such payment to be made by the member in his lifetime, continuing in as good health as when the policy expired."[51]

This decision created doubt and uncertainty in the minds of many insured persons, and some of the associations hastened to announce that their practice was to pay claims under circumstances such as the above. On December 6, 1810, the Equitable Society passed a by-law to that effect.[52] But in the majority of the associations, the grace period continued to be limited in accordance with the decision.[53] The length of time generally allowed was fifteen days, but a grace period of thirty days was common, especially among the newer offices.[54] It was not until about 1858 that the practice of paying claims for deaths occurring within the grace period was generally adopted.[55]

2. *Development in the United States.*

In the United States, since many of the early policies were for one year, frequently no provision for grace appeared in the contract.[56] The Rules of the Pennsylvania Company permitted an insured who had defaulted in his premium payment to pay within two months after the due date, provided the person on whose life the assurance was made was alive and in good health. A penalty of ten per cent of the premium was imposed.[57] The Girard Life granted a grace of fifteen days.[58] With the growth of the business thirty days became the customary period.[59] But even in the early seventies the custom was not common among American companies,[60] and where granted it was in the nature of a favor and not a right.[61] Despite some adverse criticism,[62] however, competition seems to have brought about its general adoption by the companies,[63] even before the legislation passed subsequent to the Armstrong investigation made its use compulsory.[64] At the present time a thirty-one-day grace period is most common, with no charge of interest on the delayed payment, although in case of death within the grace period the unpaid premium is deducted from the face value of the policy.[65]

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[51] The reasoning of the court was based on the fact that the insured would be getting more insurance than he had paid for and that the society could not collect assessments from him, since he was dead and therefore no longer a member.

[52] "That in case any person or persons on whose life or lives an assurance shall have been made shall die within 30 days next after the time stipulated in the policy for the payment of the premium due thereon, such policy, although the premium due thereon be unpaid at the time of the decease, shall nevertheless, on the premium being subsequently paid within 30 days next after the same became due, continue in force and be valid to all intents and purposes, in the same manner as if such premium had been paid in the lifetime of the person or persons on whose life or lives the assurance was made." Walford, "Cyclopaedia," *opus cit.,* vol. 2, p. 177.

[53] Walford, "History," *opus cit.,* vol. 26, p. 132.

[54] In 1826, of some twenty-five companies, 14 allowed 15 days, 8 allowed 30 days, the Amicable allowed 3 months, and the remaining two probably allowed 20 days. Babbage, *opus cit.,* table facing p. 1. See also Walford, "History," *opus cit.,* p. 132.

[55] In 1858 the decision in the case of Pritchard *v.* Merchant's & Tradesman's Mutual Life-Assur. Soc. (1858), 3 C. B., N. S. (*Eng.*) 622 was substantially in accordance with that of Want *v.* Blunt. "This decision created a great deal of alarm amongst policyholders; the public press hardly ever well-informed upon Insurance questions, fanned the flame of discontent; and nearly all the Life Offices in the United Kingdom declared that it was their practice to pay claims arising during the 'Days of Grace'." Walford, "History," *opus cit.,* p. 448. See also "On the Casualties to Which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 242; Deuchar, David, "The Progress of Life Assurance Business in the United Kingdom during the last Fifty Years," *J. I. A.* (1890), vol. 28, p. 457.

[56] See, for example, Appendix VI.

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[57] Appendix XV.

[58] Appendix IX.

[59] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Rev. Pub. & Print. Co., Phila. (1888), pp. 660, 699, 729; *Insurance Monitor* (1867), vol. 15, pp. 204, 569; *Ibid.* (1871), vol. 19, p. 239. In one company, a policy issued in 1872 provided as follows: "Grace will be allowed on the payment of premiums on this policy of as many months (not exceeding six) as shall be equal to the number of complete years during which this policy shall have been in force, the policy-holder using these periods of grace being charged legal interest for such time." Fuller et Ux *v.* Life Insurance Co. (1898), 70 *Conn.* 647, 659.

[60] Bliss, George, *The Law of Life Insurance,* Baker, Voorhis & Co., N. Y., 2d Ed. (1874), p. 272. "The American policies, almost without exception, require the payment of the premium punctually on the day named in them, and if it not so paid, the policy is declared to be forfeited. After that time, however, the companies will ordinarily, as a favor, and not a right, renew the policy, if the insured, on a new examination, is found to be in good health. . . . The competition for business in this country has led, recently, in some cases, to the introduction of the English custom, but it is of no practical utility, and gives room for the raising of embarrassing legal questions, which had better be avoided."

[61] The policy of the American Life Insurance Company provided: "Acceptance of the premium due on this policy by the *company* or its *agents,* after the day *upon which it is due,* must be considered as acts of grace or courtesy, and *in no wise* to be construed as forming a precedent for future payments or as a *waiver* of the forfeiture of the policy according to the conditions therein expressed, if any future payment of premium be omitted on the day it falls due." Fowler, *opus cit.,* p. 716. The U. S. Supreme Court held that where thirty days' grace had been given, that "this was a mere matter of voluntary indulgence on the part of the company. . . . It cannot be justly construed as a permanent waiver of the clause of forfeiture. . . . The assured had no right, without some agreement to that effect, to rest on such voluntary indulgence shown on one occasion, or on a number of occasions, as a ground for claiming it on all occasions." Thompson *v.* Insurance Company (1881), 104 *U. S.* 252, 259.

[62] File, L. K., "The Past, Present and Future of Life Assurance," *P. I. I. T.* (1905-06), vol. 7, p. 214: "The concession granted by the allowance of days of grace was intended to relieve a real hardship, but it has failed in its object, inasmuch as the assured, relying on this privilege, delays the time of payment to that extent, and the company carries the risk one additional month without compensation." See also Moir, *opus cit.,* p. 186; *supra,* note 51.

A quite recent innovation is also extremely valuable to the policyholder in keeping his insurance in force. This is the practice of many companies, usually upon request, of applying automatically the cash value of the policy to the payment of premiums after they have become due.[66]

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[63] In 1898, of 42 companies, 16 allowed a grace period, while 26 did not. McCall, J. A., *A Review of Life Insurance,* N. Y. (1898), p. 50. By 1905, however, of 51 companies, 41 provided for 30 days' grace, 1 for 6 days, and only 9 granted no concession. Fouse, "Annals," *opus cit.,* p. 41.

[64] For details of such legislation, see the general discussion and citations, *supra,* ch. 3, p. 49, *et seq.,* especially note 67.

[65] The practice of allowing grace without an interest charge seems to have been introduced shortly after the beginning of the present century. It is now customary, although not compulsory. One writer believes that thus the true benefit of the clause is lost, since it encourages carelessness. Moir, *opus cit.,* p. 186. Of the fifty leading companies, 36 grant a 31-day period without interest, 12 grant one month or 30 days, and the provisions of 2 are not given. Some companies allow an additional extension upon the payment of interest. The Presbyterian Ministers' Fund provides for a grace period of one year without interest. *Best's Illustrations,* N. Y. (Sept., 1930). For the typical statutory provision, see Appendix XVI.

[66] Elson, *opus cit.,* p. 359. The privilege is granted by some 20 out of 50 companies. *Best's Illustrations,* N. Y. (Sept., 1930). The clause permitting automatic premium loans usually provides in substance as follows: "If due written request for the operation of this provision has been filed at the Home Office of the Company before default in payment of premium, thereafter until a written revocation of said request has been filed with the Company the amount of any premium not paid before the end of the grace period, will automatically be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as prescribed for loans, provided that the total indebtedness hereunder will then be within the loan value described in Section 7. If the loan value is insufficient to cover the whole premium, the Company will loan a pro rata premium for as long a period as the loan value will allow. At the end of such period, if the balance of the premium be not paid, this policy shall cease; subject however, to thirty-one days' notice as provided in Section 7 hereof.

"While this policy is continued in force as above, the whole or any part of the indebtedness may be repaid and payment of premiums may be resumed at any time without furnishing evidence of the good health of the insured." *Flitcraft Life Insurance Manual* (1929), pp. 6, 7.

In the United States there is no longer any doubt that claims arising out of death within the grace period will be paid.[67] And the courts have held that a grace period of one month does not satisfy a statutory requirement of thirty days.[68] So, too, where a grace period ends on Sunday, the courts generally permit payment on the following rather than the preceding day.[69] But in the absence of express agreement, the grace period is not extended to the payment of a note given for a premium.[70]

Excuse for Non-payment.

1. *In General.*

As previously stated, the failure to pay a premium when due, unless otherwise stipulated, renders the policy void and forfeits all benefits.[71] Impossibility of performance is no excuse for default. Where the wife of the insured was ignorant of the existence of the policy and the insured was "deranged in mind and incapable of attending to any matter of business whatever, and for that reason, and that alone, failed to pay the premium when it was due," the United States Supreme Court decided that to "hold the company to its promise to pay the insurance, notwithstanding the default of the insured in making punctual payment of the premiums, is to destroy the very substance of the contract. This a court of equity cannot do."[72]

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[67] McMaster *v.* N. Y. Life Ins. Co. (1901), 183 *U. S.* 25. For the English practice see Vance, *opus cit.,* p. 287.

[68] N. Y. Life Ins. Co. *v.* Hardison (1908), 199 *Mass.* 190, 194. In February it would be less than thirty days, to the prejudice of the insured. Mass. L. (1907), ch. 576, § 75, sub-sect. 1, provided for a grace period of thirty days.

[69] Penn Mutual Life Ins. Co. *v.* Miller (1926), 16 *F.* (2d) 13. There is no analogy between grace in life insurance and grace in commercial paper "because there was no uniform custom of insurance companies as to extending the time of payment of premiums; the right to the extension was strictly statutory or contractual. . . . Although denominated days of grace, the 31-day period is in no sense a matter of grace. . . . We see no reason for so construing this clause as to shorten this contractual period to 30 days, if the thirty-first day is on a Sunday; . . ." Illinois seems to hold to the opposite view. Hixenbaugh *v.* Union Central Life Ins. Co. (1920), 219 *Ill.* App. 534.

[70] Seay, *opus cit.,* p. 7.

[71] N. Y. Life Ins. Co. *v.* Statham (1876), 93 *U. S.* 24, 31. By Mr. Justice Bradley: "The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture, if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence." And in Fowler *v.* Metropolitan Life Ins. Co. (1889), 116 *N. Y.* 389, 393: "A long line of authorities has settled the law to be that when it is expressly provided that the premium on a life insurance policy shall be paid on or before a certain day, and in default thereof the policy shall be void, that the non-payment of the premium upon the day named works a forfeiture."

But the company may waive prompt payment,[73] and in certain cases the policy remains in force even when the premium is in default.[74]

2. *War.*

Where the insured is prevented from paying his premiums because of the existence of a state of war, the courts are in conflict as to the validity of the policy after peace has been declared.[75] Three lines of decisions have been evolved,—(1) the Connecticut Rule, (2) the New York Rule, and (3) the United States Supreme Court Rule.

(a) Connecticut Rule.

The Connecticut courts have decided that where a state of war renders the payment of the premium illegal, the insurance company is deprived of its consideration and the contract is dissolved.[76] "It is no answer to say that the premium may be subsequently paid or allowed when the policy is collected. . . . *Time is the essence of the contract.* The law will no more postpone the payment in such cases than it will deprive the party of it entirely." [77] The court considered it more desirable to forfeit a vested interest than to write a new contract,[78] and after emphasizing the fact that the payment of the premium is not a debt, the decision pointed out that if the right to reinstatement were granted by the court it would practically revive only the very worst risks for the company, and compel it to submit to the loss of all the better and more desirable risks.[79] "It was an executory contract on his [the insured] part, and the law preventing the execution of it by him, the contract was necessarily dissolved." [80]

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[72] Klein *v.* Insurance Company (1881), 14 Otto (*U. S.*), 88, 91. So too in Carpenter *v.* The Centennial Mut. Life Assn. (1886), 68 *Iowa* 453, 456: "It is true, it was impossible for the assured at the time required therein to perform it; but he could have provided for its performance beforehand, and those of his family about him could have performed it for him. The fact that the plaintiff did not know of the existence of the policy before her husband's death does not change the case. Prudence and care on the part of the assured would have prompted him to prepare for the payment of the assessment upon the day it became due, and to inform his wife of his contract, and his obligation to perform it at the time therein prescribed."

[73] Insurance Company *v.* Eggleston (1877), 96 *U. S.* 572, 577. Here the local agent moved and the insured did not know to whom payment should be made. By Mr. Justice Bradley: "Any agreement, declaration, or course of action, on the part of an insurance company, which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred followed by due conformity on his part, will and ought to estop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract." See also Aetna Life Ins. Co. *v.* Ragsdale's Adm'r. (1898), 95 *Va.* 579.

[74] For example, insolvency of the insurer, where the business is suspended; refusal of the tendered premium; any wrongful act of the insurer preventing payment; and want of notice, where it is the duty of the insurer to give such notice. Vance, *opus cit.*, pp. 293-296.

[75] For a full discussion of the contract rights between parties in case of war and after see Kershaw *v.* Kelsey (1868), 100 *Mass.* 561, a case involving a lease in one of the southern states.

[76] Worthington *v.* The Charter Oak Life Ins. Co. (1874), 41 *Conn.* 372.

(b) New York Rule.

The New York courts have held that the contract is merely suspended during a state of war. "The rule of the law of nations which annuls contracts between the citizens of two States upon the breaking out of a war between the States, has no application to life insurance, unless the policy insures against death while the assured is in the military service of his country. . . . It is the settled policy of government to impair, as little as possible, the private rights of citizens by national differences." [81] The policy is revived after the termination of war by a "tender of the premiums unpaid, with interest upon each from the time it fell due." [82]

(c) United States Rule.

The United States Supreme Court has adopted a middle course, holding that the policy is no longer in force, but insisting upon a return to the insured of the surrender value. In the words of Mr. Justice Bradley, if the company forfeit the policy, it "cannot with any fairness insist upon the condition, as it regards the forfeiture of the premium already paid; that would be clearly unjust and inequitable. The insured has an equitable right to have this amount restored to him, subject to a deduction for the value of the assurance enjoyed by him whilst the policy was in existence; in other words, he is fairly entitled to have the equitable value of his policy." [83]

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[77] *Ibid.,* p. 408.

[78] *Ibid.,* p. 409.

[79] *Ibid.,* p. 412.

[80] *Ibid.,* p. 417.

[81] Sands *v.* N. Y. Life Ins. Co. (1872), 50 *N. Y.* 626.

[82] Cohen *v.* The N. Y. Mut. Life Ins. Co. (1872), 50 *N. Y.* 610, 619. By Allen, J.: "The annual premium paid during the first years of a life policy is in excess of the actual risk; and this excess is so much paid in advance for the greater risk during the later years in case of a prolonged life." See also Mutual Benefit Life Ins. Co. *v.* Atwood's adm'x. (1874), 24 Grat. (*Va.*), 497.

Dividends

Development in England.

Dividends are refunds made to policyholders out of surplus funds of the company. In life insurance they represent essentially the return to the policyholder of overpayments and do not arise as in corporate enterprises organized for profit from the chance element in production. Dividends had their origin in the practice of the early companies of overcharging the insured in order to provide a safety fund against errors in calculations, based on imperfect data, or unforeseen contingencies.[84] The English companies at first were cautious in apportioning dividends, the practice being to declare them at irregular intervals as their financial condition warranted. Later it became customary to distribute the surplus at regular intervals, such as at the end of three, five, seven, or ten years.[85] The Equitable Society paid its first dividend in cash, but discontinued the plan upon the apportionment of the second in favor of the plan of crediting the member with additional insurance.[86] Participation did not apply to holders of term and special policies.[87] The Society set aside one-third of the surplus for security, but the balance was distributed among the members according to the length of time their policies had been in force.[88] Apportionment was made at intervals of ten years.[89]

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[83] N. Y. Life Ins. Co. *v.* Statham (1876), 93 *U. S.* 24, 34. While most of the cases follow New York, the United States rule seems fairest. "So far as the contract is executory it is thoroughly inequitable, and opposed to sound reason, to hold that it is not discharged in accordance with its terms by reason of the nonperformance of the insured, even though performance would be illegal because of the existence of war. But in so far as it is executed and the insured has acquired vested rights in the reserve fund of the insurer, subject to be defeated by nonperformance of a condition subsequent, the relation between insurer and insured is practically that of debtor and creditor, and the same rule should be applied as in the case of debts due at the outbreak of war, in which the rights of the creditor are universally held to be merely suspended." Vance, *opus cit.*, pp. 113-115.

[84] Walford, "History," *opus cit.*, vol. 26, p. 10. "The 'Bonus System' of Life Assurance arose out of the circumstance that even when reasonably reliable data had been obtained for the conduct of the business, yet Life Assurance on a fixed basis was deemed an experiment; and there being no outside capital—beyond the premium contributions paid by the members—an overcharge was essential to safety. And, equitably, this overcharge was to be returned to the members to whom of right it belonged. It was for a long period dealt with much on the footing of a Lottery: some getting more, some getting less, than their fair share. But this feature contributed largely to the expansion of the business."

[85] Alexander, William, *The Life Insurance Company,* Appleton, N. Y. (1905), p. 90.

Development in the United States.

In the United States, participation was also provided for in the earliest association. Article XIV of the Plan of Agreement of the Presbyterian Ministers' Fund stipulated that any surplus was to be distributed, "Provided Always, That particular Regard be had to Contributors, so that their Widows and children be entitled to a share in said Surplusage in Proportion to the Sums paid by their Husbands and Fathers." [90]

Among the commercial companies, both the Girard Life and the Pennsylvania Company recognized that some sort of profit sharing was desirable, and that it would increase the popularity of the business. On December 27, 1844, the former company declared a dividend whereby the sum insured was increased according to the number of years the policy had been in force. The maximum addition was ten per cent.[91] The Pennsylvania Company did not favor an increase in the amount of insurance at an advanced age without medical examination, and "in the way of precaution or convenience "a credit was issued to the policyholder.[92] This was the origin of scrip dividends, a method under which the company issued certificates which bore interest until redeemed by the directors.[93] Although the five-year period was most general during this time, the New York Life inaugurated the practice of declaring annual dividends, and continued it for some years.[94] The Mutual Benefit declared a scrip dividend in 1847,[95] followed in the next year by the Mutual Life of New York.[96] The common basis for the allotment of all types of dividends in these early days was "a uniform percentage of the premiums paid, irrespective of the age of the insured." [97]

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[86] In 1777, the Equitable paid a cash dividend of 10 per cent of the premiums previously paid. In 1782, it credited dividends as additional insurance. Hutcheson, W. A., "Some Facts in the Development of Life Insurance in the United States," *P. A. L. I. P.* (1920), vol. 14, p. 60.

[87] Knight, C. K., *The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 42.

[88] The bonus was apportioned "according to the extent of the sum insured, without reference to the amount of the annual premium; . . ." Farren, George, *A Treatise on Life Assurance,* London (1823), p. 41, pub. in *Pamphlets Finance,* vol. 158. The amount of each person's share was added to his policy, so that his representatives received "considerably more than the original sum insured." Thus, if a person had insured in 1762, the Society would have paid in the event of death in 1810, £4780 for every £1000 of insurance. Various other illustrations are given. Baily, Francis, *An Account of the Several Life-Assurance Companies established in London,* London, 2d Ed. (1811), pp. 9, 10, pub. in Comber, W. T., *Inquiry Speeches, etc.*

[89] On Dec. 7, 1809, the General Court resolved "that in future the addition of 2 per cent on the sum assured should be made to each existing policy *at the end of every year,* for the next 10 years: at the end of which period another valuation is to take place, when the surplus profits of the Society (after allowing for the bonus just alluded to) will be divided among the existing policies, in the usual manner." On Dec. 19, 1809, this 2 per cent bonus was limited to old members and to claims "only as should arise prior to the next division of profits." *Ibid.,* p. 10.

[90] Fowler, *opus cit.,* p. 615.

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[91] *Ibid.*, p. 657. This is apparently the first dividend declared by any American company. Hutcheson, *opus cit.*, p. 61.

[92] Fowler, *opus cit.*, p. 657. On January 1, 1845, it was decided that thereafter "all premiums for one or more years shall entitle every policyholder to a credit of one-half the profits; certificates of estimated profits to be issued every five years, or oftener, at discretion of the board of directors, such certificates to bear 6 per cent. interest." The first dividend was not actually declared until 1850. Hutcheson, *opus cit.*, p. 61.

[93] *Ibid.*

[94] *Ibid.* See also Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company*, N. Y. (1895), pp. 24, 25. The company declared its first dividend in 1846. By 1869 all outstanding dividends had been redeemed, and future dividends were payable in cash. *Ibid.*, p. 66. For a form of scrip dividend, see p. 67.

[95] Hutcheson, *opus cit.*, p. 61.

[96] "This dividend was fifty-two per cent. on the premiums paid; payable with each policy at death only." Mutual Life Report, 1858, quoted in Hudnut, *opus cit.*, p. 24.

[97] Hutcheson, *opus cit.*, p. 61. See also Knight, *opus cit.*, p. 126. "Dividends paid to policyholders throughout this period [1850 to 1860] ranged from 15 to 40 per cent of the annual premium. Some companies declared them annually, some every three years, and others quinquennially. Most of them consisted of interest bearing scrip, redeemable at the discretion of the company. Some companies allowed them to be used to purchase additional insurance, others permitted their use to reduce the cash premiums, while a majority confined their use to the cancellation of premium notes. Various methods of determining dividends were used, the percentage of the premium paid being the generally established basis." For a discussion of early dividend schemes, see Jencks, T. R., "Life Insurance in the United States," *Hunt's Merchants' Magazine* (1843), vol. 8, p. 229. See further, Pierson, I. C., "Brief Statement of the Development of Actuarial Science in the United States of America," *T. A. S. A.* (1901-03), vol. 7, p. 5.

1. *The Premium Note System.*

In 1844, the New England Mutual introduced the premium-note system,[98] a method widely used in the succeeding years by other companies. The portion of the premium usually permitted to be paid by note varied from one-third to three-fourths, although half-note premiums seem to have been most general.[99] The policyholder was expected to pay interest on his notes, but the company estimated that after a certain number of years, the dividends would permit cancellation of some of the notes, thus maintaining in effect a level cash premium. In case of death the company anticipated that a post-mortem dividend would cancel the remaining outstanding notes, making available to the beneficiary the entire face value of the policy.[100] Success of the plan depended upon the ability of the company to declare dividends sufficiently large to retire the notes, but failure to do so made it necessary for the insured to pay interest on an increasing number of notes. This resulted in a high lapse ratio and the subsequent abandonment of the plan by most companies.[101]

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[98] Barbey, J. A., *The Early History of the New England Mutual Life Insurance Company,* Boston (1923), p. 16.

[99] One of the arguments advanced against the use of the note system was that the notes given by the insured would be deducted from the claim, thus reducing the insurance. "This was rather an unfortunate statement, for if the half-note plan enabled the applicant to nearly double his insurance as compared with the all-cash plan, the average dying policy holder would have a claim on a double policy sum, simply diminished by the amount of his notes, and this would mean a net gain to the representatives of the insured." *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia,* Phila. (1922), pp. 17, 19.

[100] *Testimony Taken Before the Joint Committee of the Senate and Assembly of the State of New York To Investigate and Examine into the Business and Affairs of Life Insurance Companies Doing Business in the State of New York,* Albany (1905), 10 vols., vol. 3, pp. 2263-2266. In his testimony before the committee, Emory McClintock explained the theoretical workings of the note system as follows. Assuming a premium of $100.00, payable half in cash and half by note, bearing 7 per cent interest, the first cash payment would be $50.00. The second premium would involve $50.00 in cash plus $3.50 in interest on the first note, together with another note for $50. The third premium would consist of $50.00 in cash plus $7.00 in interest and a third note for $50.00. The fourth premium would consist of $50.00 in cash plus $10.50 in interest and a fourth note for $50.00. The fifth premium would consist of $50.00 in cash plus $14.00 in interest and a fifth note for $50.00. With the payment of the sixth premium, however, a dividend would cancel the first note of $50.00. In this manner there would be outstanding at any one time only four notes, requiring maximum annual interest payments of $14.00. "The next year the company gave up the second note as a dividend, but [the insured] gave another, so that it still had four notes in its possession, giving up the earliest note and keeping the new one . . .; and then, when the man died the company handed over all those notes and called it a dividend, so that he got his full insurance in cash." To summarize, the insured actually paid in cash, a first premium of $50.00; a second of $53.50; a third of $57.00; a fourth of $60.50; a fifth of $64.00; and $64.00 for each succeeding premium.

2. *The Contribution Plan.*

Until the year 1863, dividends had been apportioned as a uniform percentage of the premiums paid, without regard to the age of the insured.[102] In order to correct the inequity inherent in such a system, the Mutual Life of New York originated the contribution plan, the method at present in use, although with slight variations among the companies.[103] It was approved by statute in both Massachusetts and New York.[104]

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[101] *Ibid.*, p. 2266. Since the earnings were insufficient to cancel all notes at death, the system became one of decreasing insurance at increasing cost. See also, Maclean, J. B., *Life Insurance*, McGraw-Hill, N. Y. (1924), pp. 351, 352. "The extent to which these notes were taken may be judged from the fact that in 1851 more than half the assets of two very excellent companies were in such notes . . ." Hutcheson, *opus cit.*, p. 63. According to the *Insurance Monitor* (1867), vol. 15, p. 207, two-thirds of the companies accepted premium notes. See further, Knight, *opus cit.*, p. 133. The attitude of the New York Insurance Department was thus expressed. "It is apparent that the subject of the amount of Assets which may be properly and safely held by a Life Insurance company in premium notes or loans will soon demand a careful, well-considered and definite Legislative solution. The Superintendent is uneasy and dissatisfied with the large percentage exhibited by some companies. . . . It would seem to be entirely unnecessary to enter into an elaborate argument to demonstrate the futility of having a re-insurance Fund founded only or principally on promissory-note or premium-loan *offsets* against the policy liability. The notes are a good and legal offset in case of death against the policy—but *cui bono?* A testator almost in *articulo mortis* can execute his promissory notes for his widow and children without paying any commission on them." *N. Y. Ins. Rep.* (1867), vol. 8, pp. lxxxiv, lxxxv.

[102] *Supra*, note 97. See also *Historical Sketch of The Mutual Life Insurance Company of New York* (June, 1927), p. 26.

[103] "The contribution method aims to apportion to each policy so much of the surplus as was contributed by that policy." The method was devised in 1862 by Sheppard Homans, and his assistant, D. P. Fackler, *Ibid.* It was first applied in the distribution of the surplus in 1863. Homans, Sheppard, "Life Insurance," *One Hundred Years of American Commerce*, C. M. Depew, Ed., Haynes & Co., N. Y. (1895), p. 94. See also Pierson, I. C., "Brief Statement of the Development of Actuarial Science in the United States of America," *T. A. S. A.* (1901-03), vol. 7, p. 5.

[104] Mass. L. (1866), ch. 33, § 3; N. Y. L. (1872), ch. 100, p. 239. It was approved by the Mass. Ins. Dept. in its report of 1868. *Mass. Ins. Report* (1876), vol. 21, pt. 2, p. 247, although it was criticized by some as falling "very far short of perfect equity." *J. I. A.* (1869), vol. 14, p. 328.

3. *Annual Dividends.*

In order to compete with the lower initial cash premiums offered by the mutual companies accepting premium notes, and of the stock companies which were now becoming prominent, the remaining companies gave to the insured the option of receiving his dividends annually in cash, for the purpose of applying them to the payment of premiums.[105]

The revival of interest in annual apportionment seems to have been the result of action taken by the Mutual Life of New York. Prior to 1863, this company had adopted a quinquennial distribution, but in that year provision was made for a triennial dividend, and three years later the company adopted the method of annual apportionment.[106] In the same year Massachusetts enacted legislation permitting distribution of surplus funds annually, or once in two, three, four, or five years;[107] but New York delayed statutory approval of annual dividends until 1892.[108]

4. *Deferred Dividends.*

(a) The Tontine Principle.

The application of the tontine principle to life insurance introduced into the business a feature which has had a profound influence on its development.[109] In order to evade the usuary laws which had prevented the growth of a funded system of national finance, governments had frequently resorted to the issue of annuities and child endowments as a means of raising funds.[110] The tontine was a somewhat later development, having been put into operation in France during the year 1689. It took its name from that of its originator, Lorenzo Tonti, a Neapolitan by birth, who was attracted to Paris by the regime of Mazarin.[111] In its original form the tontine was a loan, "in which the premium was never to be repaid, but the entire interest on the loan was to be divided each year among the survivors of the original subscribers." [112] The idea proved to be popular, and tontines spread to other countries.[113] Many private tontines also sprang up, with serious losses to many subscribers.[114]

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[105] Hutcheson, *opus cit.,* p. 63; Knight, *opus cit.,* p. 151; McClintock, *opus cit.,* p. 2266.

[106] *Ibid.; Historical Sketch of The Mutual Life Insurance Company of New York* (June, 1927), p. 19; for an advertisement announcing this practice, see *Insurance Monitor* (1866), vol. 14, p. 336.

[107] Mass. L. (1866), ch. 33, § 1; N. Y. L. (1892), ch. 690, § 83, p. 1968: "Any domestic life insurance corporation may ascertain at any given time, and from time to time, the proportion of surplus accruing to each policy from the date of the last to the date of the next succeeding premium payment, and may distribute the proportion found to be equitable either in cash, in reduction of premium or in reversionary insurance, payable with the policy, and upon the same conditions as therein expressed at the next succeeding date of such payment, notwithstanding anything in the charter of such corporation to the contrary." See also § 87 (repealed L. (1906) ch. 326, p. 782).

[108] N. Y. L. (1892), ch. 690, § 83, p. 1968.

[109] Hutcheson, *opus cit.,* p. 64.

[110] Walford, "History," *opus cit.,* vol. 25, p. 115. Jack, A. F., *An Introduction to the History of Life Assurance,* London (1912), pp. 206-210.

Berthold Holtzschuher was born at Nuremberg about the year 1510, and George Obrecht at Strassburg in 1547. Both formulated plans for the insurance of children in the sense that in return for contributions made at birth, a sum was to be paid upon marriage. In the case of death, the deposits were forfeited to the government. Holtzschuher advanced his scheme in 1565, and Obrecht in 1605, but both were unsuccessful. Probably "both obtained their inspiration from Italy, where the *montes pietatis* had already arrangements of a similar nature. At the same time it must be borne in mind that with the Italian institutions it was from the first to last a question of how best to obtain funds for the object which had led to their being formed, namely, that of making loans. It was from the loans that the public was to derive the real benefit, and not from the payment of insurance sums to the children. That was merely one means among others to an end."

[111] Tonti had been granted a pension in 1648 or 1649. Two unsuccessful attempts had been made in 1653 and 1656 to establish a state tontine, but before its actual operation in 1689, Tonti, "who with the death of Mazarin had lost his pension, and afterwards fallen into disgrace and the Bastille, had probably already died there." Jack, *opus cit.*, p. 211.

[112] McCall, J. A., Testimony before the New York Investigating Committee, *opus cit.*, vol. 2, p. 1420. See also Jack, *opus cit.*, pp. 211-213: "The constitution of this first State tontine was as follows. A sum of 14,000,000 livres was to be raised by means of individual payments of 300 livres to the State, and a rent for life was to be granted to the participators, to furnish which 10 per cent on the total was to be set aside yearly. The loan was divided into fourteen classes according to the age of the entrants, and the interest paid was regulated by the same consideration, the higher ages taking the higher interest. The essential peculiarity was, however, that whilst there was to be no ultimate repayment of the capital, there was not the customary liquidation by means of a constant rate of return, year after year, deemed to cover both interest and repayment; but, on the death of a member in any particular class, the interest formerly paid to that member went to swell the return paid to the remaining members of the class, till it should be finally extinguished. . . . The striking advantage of the arrangement—quite apart, however, from questions as to its morality and moral influence—was that the income obtained increased with increasing age, or just when the need for it was likely to be most felt."

[113] "From France the idea spread to other countries. Already in 1671 we meet with State tontine schemes in Amsterdam; 1692 in England; 1698 in Brandenburg, and 1752 in Gotha." *Ibid.*, p. 213.

[114] The most notorious of these was the Caisse Lafarge, named after its director, François Lafarge. This was wound up in 1809 by the government,

(b) Application to Life Insurance.

In the sixties the cost of securing new business had been rapidly increasing, and the newer companies were at a disadvantage in meeting the competition of the well-established companies offering annual dividends. To overcome this handicap, the Equitable, in 1868, introduced the deferred dividend system, which was really an application of the tontine principle.[115] All but a few companies subsequently adopted it.[116]

(i) Tontine Policies.

Under this form of policy each person insured was placed in a group of similar policyholders, and a separate record kept of each group indicated the actual surplus arising out of withdrawals and death. All dividends were accumulated for a specific period, "and policies terminating within that time by death or lapse were to forfeit all surplus *and, in case of lapsed policies, the reserve as well.*"[117] Because of the harsh conditions imposed,[118] early lapses to avoid greater penalty upon later lapsing were common, and the cost of replacing withdrawing policyholders greatly diminished the antici-

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"the subscribers receiving back but a small proportion of their subscriptions. It was enacted for the future that no tontine should be set in operation without authorization by the State, and existing ones . . . must be authorized also." *Ibid.*

[115] Hutcheson, *opus cit.,* pp. 63, 64: ". . . the resourcefulness of the Equitable's officers coupled with their correct estimate of the speculative spirit of the average American to whom they sold insurance, doubtless prompted the introduction of the Tontine Dividend policy." See also McCall, "Testimony," *opus cit.,* p. 1421.

[116] The Connecticut Mutual, Mutual Benefit, and Provident Life seem never to have issued deferred dividend policies. Price, W. H., "Life Insurance Reform in New York," *Pub. Am. Econ. Ass'n.* Third Series (1909), vol. 10, no. 4, p. 77, footnote.

[117] *Historical Sketch of The Mutual Life Insurance Company of New York* (June, 1927), p. 20. See also Manly, H. W., "On the American Tontine and Mutual Assessment Schemes," *J. I. A.* (1886-87), vol. 26, pp. 184, 185: "A fund was to be formed by the annual subscriptions of those who joined a certain class, and at the end of a fixed term the survivors alone, who had rigidly conformed to every regulation, were to share in its distribution, the only exception being that if a subscriber who had abided by the regulations happened to die during the period, then his relatives should receive the insurance provided in his policy." The two extremes of insurance were the tontine which stressed investment, and the mutual assessment schemes which emphasized protection. *Ibid.,* p. 183. See further Knight, *opus cit.,* p. 150.

[118] For a description of the harsh conditions of tontine policies to bring about forfeiture, and limit the number of participants, see Manly, *opus cit.,* pp. 184-187.

pated surplus available for those remaining at the end of the specified period.[119] This led to the introduction of the semi-tontine policy.

(ii) Semi-Tontine Policies.

The semi-tontine or deferred dividend policy applied the principle of forfeiture merely to the dividends, thus reserving to the insured his surrender value in case of lapse during the period.[120] The amount of dividends payable at the end of the period was calculated either under the "asset-share" system, or the "hypothetical annual dividend" system.[121] Twenty years was the common period of deferrment, although periods of five, ten, or fifteen years were sometimes used.[122]

(c) Good Features.

There are many features inherent in the deferred dividend system which are favorable both to the company and to the insured.[123] But sometimes it was adopted without particular reference to the policyholder's welfare.[124] The arguments in favor of deferred dividend policies were thus presented to the Armstrong Investigating Committee:[125]

> The first great advantage of deferred dividend policies is that it makes the company much stronger that issues them. I consider that surplus is a test of strength and the deferring of dividends of course increases the surplus. . . .

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[119] Price, *opus cit.*, p. 80.

[120] Willey, Nathan, *The Principles and Practice of Life Insurance*, Spectator, N. Y., 6th Ed. (1892), p. 29. See also p. 28 for a discussion of tontine policies.

[121] Maclean, *opus cit.*, pp. 195, 196.

[122] *Historical Sketch of The Mutual Life Insurance Company of New York* (June, 1927), p. 20.

[123] "Deferred dividends properly managed have much to commend them and do not deserve the popular condemnation which has been aroused by some theorists, who seem to prepare only for fair weather sailing." Moir, *opus cit.*, p. 175.

[124] "Most of the companies favored deferred dividends, because they could be easily sold, at least at first; because they postponed accountability for surplus, thus concealing low returns; because they aided in the race for business, by providing a fund which could be borrowed; because they prevented distribution of dividends before they were earned; and because they readily afforded an equitable method of dealing with underaverage risks. In too many instances the system was favored also because it afforded immense resources with which managers could speculate." Price, *opus cit.*, pp. 76, 77.

[125] Van Cise, J. G., Testimony before the New York Investigating Committee, *opus cit.*, vol. 7, pp. 6255, 6256. See also, Lunger, J. B., "Special Features, etc., in *Insurance*, a Compilation of the Addresses delivered before the Twenty-Ninth session of the National Convention of Insurance Commissioners, Milwaukee (1898), W. A. Fricke, Ed., pp. 197-206.

> Then again, I believe it is a more equitable apportionment of the dividends. I consider in almost every case the family of a man who dies before the end of, say, fifteen or twenty years, receives a good return on the money paid without dividends. About all the premiums paid are returned with compound interest added and therefore it seems fair that the men who show the greatest degree of longevity and greatest persistence in paying premiums should have the benefit of the dividends, should have the benefit of the surplus earnings over and above the death claims, expenses and legal reserves. Then again, I consider that deferred dividend assurance has been the cause of the wonderful development of American life assurance in the past twenty-five years. That it has induced much the larger part of the persons to insure their lives that have done so, . . . Then again I think it leads to keeping policies in force, and anything that does that I consider to be beneficial. Then again I think it has induced men to insure as an investment, who are a better class of lives and has lowered the rate of mortality. I think the keeping of policies in force has tended to make a smaller average of expense; and anything that does those things is commendable. Then I think it is an advantage to have a premium that is fixed and understood for a period of fifteen or twenty years. I think if a man insures on the annual dividend plan he never knows exactly what he is going to pay; . . . Then another advantage of the deferred dividend plan is that a company can afford to offer greater privileges in the way of surrender values and incontestibility and liberty of travel and occupation on account of the larger accumulation of surplus than they could if the surplus was divided annually.

(d) Defects.

The defect of the deferred dividend system which eventually brought about its abolition by law and abandonment by the companies was the result of improper management rather than any inherent vice in the system as such.[126] Probably the most serious flaw was the inability of the insured to compel an accounting. While there is some authority to the effect that the policyholder is entitled to and can compel the company to account for dividends,[127] the general rule is to the contrary.[128] Nor can the policyholder "compel the distribution of the surplus fund in other manner or at any other time, or in any other amounts than that provided for in the contract of insurance." [129]

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[126] Lunger, J. B., "The Influence of Competitive Concessions on Legislation in Life Insurance," *P. A. L. I. P.* (1914), vol. 8, p. 78: "After this lapse of time let us admit in all fairness that the fault of this method of paying dividends was not in the plan itself, but in the abuses to which the plan was subjected."

[127] Ellinger, Appellant, *v.* Equitable Life Assur. Soc. of the U. S. (1909), 138 *Wis.* 390, 395: "On the other hand, the nature of the contract of insurance disclosed by the affidavit is such that the plaintiff may, if he so elect, plead by claiming an indeterminate or indefinite sum approximating a stated

Since companies did not have to account for [130] or distribute deferred dividends, there was built up a large surplus available at the option of the management for excessive expenditures to obtain new business.[131] As stated in the report of the Armstrong Committee,[132] "the plan of deferring dividends for long periods, . . . has undoubtedly facilitated large accumulations, providing apparently abundant means for doubtful uses on the one hand, while concealing on the other the burden imposed upon the policy holders by the costly efforts to obtain new business. Annual dividends have been largely reduced, and deferred dividends, when the time for distribution has arrived, have fallen far short of expectation, causing severe criticism on the part of policy holders."

Failure of deferred dividends to attain the amounts which had been estimated by the companies caused further dissatisfaction among policyholders.[133] Such failure was brought about by the excessive

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amount and cast the burden upon the defendant to account for the surplus and profits promised by the contract of insurance." See also Cahn *v.* Northwestern Mut. Life Ins. Co. (1917), 208 *Ill.* App. 317, 323; Equitable Life Assur. So., U. S. *v.* Winn (1910), 137 *Ky.* 641.

[128] Uhlman *v.* N. Y. Life Ins. Co. (1888), 109 *N. Y.* 421; Equitable Life Assur. Soc. of the U. S. *v.* Brown 213 *U. S.* 25, 47.

[129] *Ibid.;* Greeff *v.* The Equitable Life Assur. Soc. of the U. S. (1899), 160 *N. Y.* 19, 39. In New York action by the attorney-general was a condition precedent to an order, judgment, or decree for an accounting, injunction, or receiver. N. Y. L. (1892), ch. 690, § 56, repealed (L. (1906), ch. 326, § 15) upon recommendation of the Armstrong Committee. Report, *opus cit.,* vol. 10, p. 438: "The Committee is convinced that the companies misled the Legislature in procuring the enactment of Section 56 and that it was not required to protect the companies against unjust and vexatious suits, but rather to aid their policy of concealment and to facilitate through their deferred system and through control of the distribution of dividends the continuance of their improper methods of administration."

[130] Some companies early adopted the plan of an annual accounting with deferred distribution. Price, *opus cit.,* p. 83.

[131] "Without its system of deferred dividends, making available a large surplus, upon which, according to its theory, it may draw, the company would find it impossible to expand its business at the present rate without disclosing the real result." Report, *opus cit.,* vol. 10, p. 94.

[132] *Ibid.,* p. 39.

[133] "It would be exceedingly interesting, did time permit, to review in detail the failure of these schemes to realize their prophesied results. The vice of extravagance which caused their invention has grown by what it

expenditures for new business, the decline of the interest rate obtainable on company investments, and the increased liberality of surrender values induced both by legislation and competition.[134] After carefully considering the testimony presented before it, the Armstrong Committee recommended annual distribution to the legislature for the following reasons: [135]

> Of all the reforms suggested by the Committee, nothing, it is believed, is more imperatively demanded than that the companies should be compelled to exhibit the results of their management by annual accounting. If details of management are to be left, as they should be, to the discretion of the directors, they should be compelled each year to state the results of their administration and to come under definite liabilities to the policy holders for the amounts to which the latter are entitled. There seems to be general agreement that the abuses which inevitably flow from the control of large accumulations, said to be held for policy holders but not the subject of any definite obligation, make this necessary. Even those who favor the continuance of deferred dividend contracts recognize the importance of annual accountings and of the annual credit to each policy of its fair share of the gains.
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> But if there is to be an annual accounting there is no reason why there should not be an annual distribution; on the contrary, this is needed to make the remedy complete. . . . The management should be subjected to the test of placing annually its accumulations at the disposal of the policy holders, leaving them to decide whether they shall be withdrawn. If they are to be left with the company, it should be at the option of the policy holder through the purchase of additional insurance. In this manner a suitable freedom is given to the policy holder and the company is placed under wholesome, and, it is believed, necessary, restriction.

Similar action was favored in other states, and as a result deferred dividends were prohibited by law in the legislation of 1906 and

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had been fed upon; and only in one point has it met expectation; the hope of sharing other people's forfeits has been a much stronger bait for business and for agents than simple, clean mutuality conjoined to sober humdrum prudence." Greene, J. L., "Special Features, Dividends, Surrender Values, Et Caetera," *Insurance,* Fricke, *opus cit.,* p. 164. The courts of Pennsylvania have held that estimates of future dividends cannot be held as modifying the policy. "It is obvious that a mutual insurance company cannot discriminate among its policy holders, and any agreement which would result in the payment of larger proportionate dividends to one of its policy holders than to others in the same class, would be illegal and void." Grange, Appellant, *v.* Penn Mut. Life Ins. Co. (1912), 235 *Pa.* 320.

[134] Maclean, *opus cit.,* pp. 197, 198.

[135] Report, *opus cit.,* vol. 10, pp. 429, 430.

subsequent years.[136] Thus came to an end a system which in 1898 had superseded to a very large extent that of annual dividends,[137] and which in 1915 seemed antiquated.[138]

5. *Present Practice.*

At the present time the various options available to the policyholder are set forth at length in the life contract.[139] Dividends are allotted annually, but as a general rule the payment of the first dividend is dependent upon the payment of the second annual premium. Some companies also provide for special maturity, as well as post-mortem dividends.[140] State laws frequently prescribe the various options which are available to the insured.[141] Most companies allow the insured a choice of any of the following dividend options.[142] Each dividend may be

1. Taken in cash, or used toward the payment of premiums.
2. Used to purchase paid-up additions to the sum insured, usually participating.
3. Deposited with the company at compound interest, subject to withdrawal, or payable to the beneficiary.
4. Applied to make the policy paid-up. That is, when the reserve on the policy and the existing dividend additions equal or exceed the present value of the future net premiums required under the policy, payments are no longer required.

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[136] "Report of the Commission to Recodify the Insurance Laws, Mass., June, 1906." Pub. in *Testimony taken before the Select Committee of the Senate of New Jersey Appointed April, 1906, to Inquire Into the Business of Life Insurance Companies Doing Business in New Jersey,* Paterson (1906), 4 vols, vol. 2, p. 512; "Report of Chicago Committee of Fifteen," pub. in N. J. Investigation, *opus cit.,* vol. 3, p. 929. For details of such legislation, see the general discussion and citations, *supra,* ch. 3, p. 49, *et seq.,* especially note 67.

[137] McCall, "Review," *opus cit.,* p. 47.

[138] Appleton, H. D., "Wherein Have Insurance conditions Improved During the Past Twenty Years in the Field of Life Insurance." *P. N. C. I. C.* (1915), vol. 46, p. 96: "In the past ten years non-participating policies have gained much popular favor and annual dividends have increased to such an attractive degree that the tontine idea already seems antiquated."

[139] Appendix X.

[140] *Best's Illustrations,* N. Y. (Sept. 1930).

[141] See, for example, the N. Y. Ins. Law, § 83; Mass. Gen. L., ch. 175, § 140.

[142] Appendix X.

5. Applied to mature the policy as an endowment. That is, when the reserve on the policy and the existing dividend additions equal or exceed the face value of the policy, the company will, upon the surrender of the policy, pay such amount. In case of death before the endowment period expires the company pays both the policy and the dividends. Another method is sometimes used, whereby "each dividend is applied as it is declared to reduce the period of the endowment, *i. e.,* to convert the policy each year into a different *plan* under which the term to maturity is steadily reduced." [143]

Apparently these options are of greater liberality than those available among the English companies.[144]

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[143] Maclean (1929), *opus cit.,* p. 240.

[144] Written discussion by E. E. Rhodes, of Henry Moir's article, "Divergent Developments of Life Insurance in Britain and America," *T. A. S. A.* (1928), vol. 29, pp. 276, 277.

CHAPTER IX

POLICY RESTRICTIONS

For many years after modern life insurance began the policy bristled with restrictions. Originally, when the term of insurance was short, and protection was sought chiefly by those who contemplated a sea voyage, the contract was simple and unhedged by many conditions. It was a direct promise to pay in case of death.[1] Gradually, with the growth of mutual insurance and the extension of the policy term to the whole of life, restrictions crept into the contract.[2] Generally they were of two kinds, those waived upon the payment of an extra premium, and those which rendered the policy void in case of violation. Among the former may be included the provisions relating to disease, intemperance, occupation, residence, travel, and war service; among the latter, those providing for forfeiture in case of suicide, duelling, violation of law, and execution.[3] These restrictions, coupled with the harsh doctrines evolved by the courts in developing the law of concealment, misrepresentation, and warranties, frequently worked a forfeiture of the insured's policy.[4]

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[1] See, for example, the first life policy, *supra,* p. 18, Appendix II: "... unless a policy contract first limits and circumscribes, there is absolutely no significance to privileges. For example, to say, when there is no limitation as to travel, that the insured has the privilege of traveling or residing in any part of the known world signifies absolutely nothing, as that privilege is granted by its not being prohibited.

"It may, therefore, be accepted as guiding principle that within the limits of the powers of the maker of the contract, whatever is not restricted, forbidden or prohibited is a privilege implied although not expressed." Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. of Pol. & Soc. Sci., Phila. (1905), pp. 39, 40.

[2] They were inserted for the protection of the whole group. Travel was considered hazardous, and disease was much more prevalent in tropical climates. Bailey, A. H., "On the rates of extra premium for foreign travelling and residence," *J. I. A.* (1870), vol. 15, p. 77, *et seq.*

[3] The early policies did not specifically mention misstatement of age, but a false declaration forfeited the insurance. See *infra.*

[4] *Supra,* ch. 7.

Restrictions Involving an Extra Premium

Health and Habits.

Some distinction in the rate of premium charged was made very early in the development of the business. The London Assurance Corporation imposed an extra premium upon women and those not having had the smallpox.[5] From its inception the Equitable Society charged an extra premium for persons afflicted with the gout, or not having had smallpox.[6] In 1829, an additional premium of eleven per cent was collected from those afflicted with hernia.[7] While most of the companies adhered to the practice of charging extra premiums, at least one "departed from all that had gone before." [8]

Though extra premiums were also charged in the United States,[9] concessions were sometimes made where the insured was a total abstainer. In 1845, the New England Mutual made provision for the issue of such policies, with the "understanding that whenever a majority of the persons insured under this condition should, within four years from September 1, 1845, elect to withdraw as a separate company, the Company would allow the policies to be surrendered, and would pay back the excess of premiums on each policy, over what would have been paid on a policy issued for the period during which such policy had existed." [10] Another company also reduced the premium upon the inclusion in the policy of a total abstinence clause.[11] But the importance of temperate habits was recognized by all companies, although at a later period, no provision was incorporated in the policy in most cases.[12] It is of interest to note that it was the practice of one company to reduce "the rate of premium ten per cent to those who in case of sickness [were] habitually treated upon the principles of the Homoeopathic, as contra-distinguished from the Allopathic school of Medicine." [13]

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[5] Appendix XIV. Even the gilds sometimes made distinctions in the size of the contributions, but apparently for different reasons. *Supra,* p. 25. For a discussion of insurance on the lives of women, see *supra,* ch. 5.

[6] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. & C. M. Goodsell, N. Y. (1871), vol. 2, p. 635. "The Society at the commencement charged £12 10s. extra on its premiums to persons who suffered from Gout. In 1781 it reduced the extra charge to 11 p. c. on the premiums." Eleven per cent was also charged persons not having had the smallpox. Weskett, John, *A Complete Digest of the Theory, Laws, and Practice of Insurance,* Dublin (1783), p. 203. On Dec. 2, 1802, the general court resolved, "that the directors be empowered to grant policies of assurance upon the same terms to persons who aver in their declaration that they have had the cowpox, as to those who aver in their declaration that they have had the smallpox. But if such person shall die afterwards of the *smallpox,* then such policy shall be void." The last sentence was expunged on Mar. 6, 1823. Walford, *opus cit.,* p. 632.

[7] *Ibid.,* p. 635.

[8] "The Asylum Foreign and Domestic Life Assurance Company was founded in 1824. It confines its business to assuring the lives of persons going beyond the limits of Europe; predisposed to hereditary or other constitutional maladies; of delicate health; of peculiarity of form, whether natural or accidental; labouring under mania, melancholia, or any kind of chronic disease, unaccompanied with immediate danger; females in a state of pregnancy; persons engaged in unhealthy occupations; and those who, from inadequate testimonials, uncertainty of date of birth, or other causes, would be subject to rejection or an exorbitant rate of premium at other offices." Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1886-87), vol. 26, p. 127. At a somewhat later period, the Professional Life Assurance Company admitted on equal terms persons of every class and degree to all its benefits and advantages. Keating, M. G., "Life Insurance" (1854), pub. in *Pamphlets Finance,* vol. 286.

[9] Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company,* N. Y. (1895), p. 35.

Occupation.

The early policies usually contained no restrictions upon occupation, other than those involved in travel, or military service. This was probably due to the absence at that time of the hazardous occupations which later became prevalent with the development of the industrial system. But the Equitable Society in 1829 charged an extra rate of eleven per cent of the premium for persons "holding the magistrates' licence *to retail beer.*"[14]

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[10] Barbey, J. A., *The Early History of the New England Mutual Life Insurance Company,* Boston (1923), pp. 21, 22. ". . . not enough members could be found to make the required promise . . ."

[11] The provision of the American Life and Health Insurance Company, organized in 1850, read as follows: "And it is hereby declared and agreed, that if the said [insured] shall, during the continuance of this policy, use as a beverage any spirituous or malt liquors, wine or cider, or shall use the same in any other manner internally, except when prescribed as a medicine by a physician in case of sickness, and then only during actual confinement from sickness, all moneys which shall have been paid on account of this insurance shall be forfeited to the said company, and this policy become void." Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Rev. Pub. & Print Co., Phila. (1888), pp. 680, 681.

[12] Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 40. In 1905, of 51 companies, 42 had no provision against intemperance, and in only one company was the restriction permanent. "The great care exercised by the companies generally in the selection of risks, excluding all persons of questionable habits, renders a policy clause against intemperance practically of no value." Fouse, L. G. "The Policy," *The Business of Insurance,* Dunham, H. P., Ed., Ronald, N. Y. (1912), 3 vols., vol. 1, p. 307. For a discussion of what constitutes intemperance, see *supra,* ch. 7.

[13] *N. Y. Ins. Rep.* (1867), vol. 8, pp. lix, lx.

In the United States, restrictions on occupations began to appear in policies issued prior to the Civil War.[15] Engagement in certain occupations was permitted upon payment of extra premiums, but in the absence of such payment the policy was void.[16] Even as late as 1879, one leading company in announcing an incontestable clause, excluded from its operation the following limitations on occupation:[17]

> 2. Engagement by the person upon whose death this contract matures in any of the following occupations or employments, without permission in writing signed by one of the officers of the society as designated below, is prohibited: Blasting, mining, submarine labor, aeronautic travel and excursions, the manufacture, handling or transportation of inflammable or explosive substances, service upon any railroad, steamboat, or other vessel or boat, military and naval service of every kind, whether as combatant or non-combatant, the militia, in time of peace, excepted.

The first liberalization occurred when policies were not forfeited unless the insured was actually killed as the result of engaging in the prohibited occupation.[18] Companies began to advertise that they placed no restrictions on occupation.[19] Gradually one company after another removed these provisions from its policies,[20] until in 1905 all but eight of fifty-one representative companies imposed no restrictions after one or two years.[21] At the present time only two of the fifty leading companies have any restrictions upon occupation after the issue of the policy.[22]

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[14] Walford, "Cyclopaedia," *opus cit.,* vol. 2, p. 632. "This extra—which is usually, but erroneously, supposed to have been charged in the early days of the Society—was evidently the result of experience. All subsequent experience has confirmed the justice of this extra charge for beershop-keepers."

[15] Thus, in addition to the already existing restrictions, one prominent company in 1859 provided that without previous consent endorsed on the policy, it should be void if the insured "be personally employed as an engineer or fireman in charge of a steam engine, or as conductor or brakeman upon a railroad, or as an officer, hand or servant of any steam vessel, or in the manufacture or transportation of gunpowder." Fowler, *opus cit.,* pp. 709, 710.

[16] Seay, H. L., "Broadening Insurance Coverage to Meet Life's New Problems," *P. A. L. I. P.* (1928), vol. 22, p. 54.

[17] Fowler, *opus cit.,* pp. 798, 799. This is quoted not as an exceptional clause, but as one typical of the day.

[18] Seay, *opus cit.,* p. 54.

[19] *Insurance Monitor* (1867), vol. 15, pp. 161, 569; *ibid.* (1871), vol. 19, p. 63.

[20] McCall, J. A., *A Review of Life Insurance,* N. Y. (1898), p. 48. Of forty-two companies, "the policies of ten companies impose no restrictions upon occupation; six companies impose restrictions during the first year of the policy; twenty companies impose restrictions during the first two years of the policy; one company imposes restrictions during the first three years of the policy; and five companies make restrictions continuous."

Residence and Travel.

1. *In England.*

In the older policies restrictions on residence and travel comprised a substantial part of the contract. From the very beginning of associated life insurance the risk of travel was recognized and prohibited, although "the question of *Residence* abroad was then hardly contemplated as being within Life Assurance probabilities." [23] In 1699, the Society of Assurance for Widows and Orphans forfeited all interest in case of death at sea, or in foreign parts.[24] The London Assurance Corporation permitted travel between England and Ireland upon the payment of half a guinea, but more extensive journeys required the consent of the Court of Directors and an additional premium to be determined by it.[25] The Equitable Society imposed no extra premium at first, but the policy was forfeited in the event of death occurring outside of England.[26] In 1823, travel within certain limits was permitted.[27] In comparing the practices of the various English offices in 1826, one writer has thus summarized the usual limits placed upon travel:[28]

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[21] Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 40. In seventeen companies the policy was free of restrictions immediately upon issue.

[22] *Best's Illustrations,* N. Y. (Sept., 1930). The exceptions in the case of the two companies are unimportant, and are removed after one or two years.

[23] Walford, "History," *opus cit.,* vol. 26, p. 132.

[24] *Ibid.,* vol. 25, p. 128.

[25] Appendix XIV.

[26] In 1764, the prospectus contained the following paragraph. "But it is to be observed that no advance [of rates] is taken by the Society unless there be a real hazard at the time of assurance. Thus *military and seafaring lives,* which upon the whole are more hazardous than common lives, because they are liable at certain times to become more hazardous, are yet assured while unengaged in the exercise of their profession at the same rate as the life of a common person; but as the premiums of this Society are fitted to our own nation, or to climates not more unhealthy, or abodes not more perilous than our own, the assurances made at these premiums are voidable if the party whose life is assured shall *die upon the seas,* or beyond the seas without the territories of Europe, or by the exercise of any military duty in the time of war." Walford, "Cyclopaedia," *opus cit.,* vol. 2, p. 586.

[27] *Ibid.,* p. 634. "Resolved, That in future all persons whose lives are assured in this office may go to sea, during peace, without obtaining any licence from the court of directors, and without paying any additional premium, from any part of the United Kingdom to any other part of the United Kingdom, and direct to and from any port in Great Britain to any

> By the conditions of the policies granted, all the offices restrict the assured to a residence within the limits of Europe, or require an additional premium (the magnitude of which varies according to circumstances) from those who travel into any other quarter of the globe. As the tables have been calculated from deaths amongst Europeans, some addition is perfectly just to pay for the greater risk which arises from a change of climate; . . .
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> Most of the offices allow the assured to go by sea from one part of Great Britain to another without any additional premium; they however require, that the voyage shall be performed in decked vessels, king's packets, regular packets, or steam boats, some permitting one, some several, or all of these modes of conveyance. The islands of Guernsey, Jersey, Alderney, and Sark being included by a few of them.
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> During peace, the assured are allowed to pass, in the vessels just named, from England to several ports in the channel; the most prevalent limits are between the Trexel and Brest . . . It is to be observed, that some of the offices have not restricted these voyages to times of peace. The Sun and the United Empire have allowed the widest limits.

With the increasing safety of travel, competition among the companies gradually extended the area in which the insured might travel or reside. In 1847 an attempt was made to place extra risks upon a rational as well as an economic basis.[29] Several years later the Professional Life Assurance Company advertised imposing no extra charge in time of peace for residence in or travel to Australasia, Bermuda, Madeira, Cape of Good Hope, Mauritius, and the British

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port between Helvoet and Brest, both inclusive; and also direct to and from Guernsey, Jersey, Alderney, and Sark, provided they go in vessels usually employed in carrying passengers; and that their respective policies shall not be forfeited in case of their dying upon the seas under such circumstances.

[28] Babbage, Charles, *A Comparative View of the Various Institutions for the Assurance of Lives,* London (1826), pp. 115-117. See also table opposite p. 1. The Sun permitted voyages to Hamburgh and Bordeaux; the United Empire from any port of Europe to any other port. The extra premiums charged were by no means uniform. "I had occasion, a short time since, to inquire the price of assuring the life of a friend who had an intention of going to India, and I found the addition, charged for the risk from climate, to be at some offices nearly three times as great as at others. . . ."

[29] Walford, "History," *opus cit.,* vol. 26, p. 441. "The establishment of the *Colonial* Life Assurance Company in Edinburgh in 1847, . . . marks an important epoch in the practice of Life Assurance. Hitherto, no settled practice regarding foreign residence and travel had been agreed upon. All was capricious and arbitrary."

North American Colonies.[30] In 1869, in an address before the Institute of Actuaries, the actuary of the London Assurance Corporation pointed out that numerous restrictions were detrimental to the growth of life insurance, and emphasized the arbitrary and unscientific nature of the extra charges, "for the most part little better than random guesses made on no intelligent principles." [31] He classified extra risks into sea and climate risks, and recommended that in the case of the former, except as to seafaring men, the charge be dispensed with.[32] With respect to climate risks he concluded that "for this purpose it will be sufficient to divide the world into two portions only; one, containing what may be considered healthy climates, to which the common premiums will apply; the other, unhealthy districts, for all of which a uniform scale of premiums may . . . safely be charged." [33] Nevertheless, even toward the close of the nineteenth century, English companies limited the insured with reference to residence and travel.[34]

2. *In the United States.*

(a) In General.

In the United States because of the size of the country and its lack of settlement in many parts, restrictions were early imposed limiting residence and travel to the settled and healthy areas. These were modified, however, upon the payment of an additional premium.[35] The provision of the Girard Life is typical of that prescribed by the other companies. It stipulated that the insurance should be void; and all premiums forfeited, if the insured should die at sea, or should, without the consent of the company, previously obtained in writing, "pass beyond the settled limits of the United States (excepting into the settled limits of the British Provinces of the Two Canadas, Nova Scotia, or New Brunswick;)" or should, without previous consent, "visit those parts of the United States which lie south of the southern boundaries of the States of Virginia and Kentucky." [36]

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[30] Keating, *opus cit.*

[31] Bailey, *opus cit.,* pp. 77, 78. "Latterly a practice has grown up, convenient but not scientific, of bounding the prohibited regions by two lines drawn round the globe parallel to the equator, and corresponding generally with the 33rd degrees of north and south latitude respectively."

[32] *Ibid.,* p. 79.

[33] *Ibid.,* p. 81.

[34] Deuchar, David, "The Progress of Life Assurance Business in the United Kingdom during the last Fifty Years." *J. I. A.* (1890), vol. 28, p. 455. Persons, not seafaring men, were "permitted to travel to or reside in any part of Europe, North America to the northward of 33° N. latitude, South America to the southward of 30° S. latitude, South Africa, Australia, New Zealand, etc., without any extra charge."

[35] Fowler, *opus cit.,* pp. 653, 654. "By the Pennsylvania Company the life risk was recognized as a varied quantity computable for its different exigencies, and as travellers and distant sojourners evinced an increasing disposition to avail themselves of the life insurance prudence, it made special terms for travellers by sea and land and residents in foreign countries, such rates as additions to the normal ones, 'varying with the risk.' "

It would be futile to attempt to trace in detail the various changes of the travel clause during the nineteenth century, but certain modifications may be pointed out. It became customary to indicate a western limit also.[37] In 1852, the life department of the Royal of Liverpool issued policies with "no extra charge for voyage risk of passengers crossing or recrossing the Atlantic in ocean steamers or first-class sailing vessels—residence admitted in Europe or North America (east of the Mississippi) north of 38° north latitude." [38] The discovery of gold in California with the resultant rush of settlers, many of whom desired insurance, led to the imposition of varying additions for the extra hazard.[39] The routes prescribed were *via* Cape Horn or the

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[36] Appendix IX. Permission was usually granted "to travel and visit in the United States, South of the southern boundary of Virginia and Kentucky, from the first day of November to the first day of July next following.

"Any person insured, not being engaged in any maritime occupation, is permitted, during peace, to go or travel by sea in any sound sailing packet or steamer, direct from one place to another, situated on the Atlantic Coast, between the Southern boundary of Virginia and the northern point of Nova Scotia." See also Appendix VIII; Hudnut, *opus cit.,* p. 20.

[37] *Ibid.,* p. 35. The limit was fixed as east of the Rocky Mountains. Some fixed it east of the 100th degree of west longitude, thus including parts of the present states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. Walford, *opus cit.,* p. 698. See also Moore, C. I. D., *The Pacific Mutual Life Insurance Company of California* (1928), pp. 131, 132.

[38] Fowler, *opus cit.,* pp. 689, 690. "At the request of the American agents, the board of directors in Liverpool adopted a resolution extending the privilege of residence to any part of North America to the north of 36 30 north latitude, but not to the westward of the Rocky Mountains; also, to travel to (but not permanent residence in) any part of North America eastward of the Rocky Mountains from November 1 to July 1."

[39] "There is a very great discrepancy in the experience of different offices as to the value of California risks; ten per cent. being not enough, according to the limited, brief and early experience of some of the offices, to cover the extra risk on the lives of California emigrants, while one per cent. is found amply sufficient, according to the later, yet still limited experience of other offices that have embarked in these risks." Walford, *opus cit.,* pp. 691, 692, quoting Knapp, M. L., *Lectures on the Science of Life Insurance,* 2d Ed. (1853).

Isthmus of Panama, but some companies also permitted the overland route through Missouri.[40] As the result of unfavorable experience, severe conditions were sometimes imposed.[41]

Although here and there isolated companies removed restrictions,[42] and protests were voiced in the press,[43] as late as 1879, a knowledge of geography was most essential to the prospective purchaser of life insurance, as the following conditions indicate:[44]

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[40] Hudnut, *opus cit.,* p. 34.

[41] *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia,* Phila. (1922), p. 25. The Company issued the following regulations:

"1. Persons to be insured must be of medium height, of robust and healthy constitution, free from rupture, and of temperate habits.
2. Not to be under 20, nor over 50 years of age.
3. Measurement round the breast, under the vest, not to be less than 34 inches.
4. Policies to be issued for three years only, and not over $2,000 taken on any one life.
5. An extra charge of 3 per cent. upon the amount insured, in addition to the seven-year rate of the table, payable annually cash in advance.
6. Persons going by the overland route through Missouri, must pay 1 per cent. extra on the sum insured, in addition to the above."

[42] *Insurance Monitor* (1867), vol. 15, pp. 158, 160, 161, 204. *Ibid.* (1871), vol. 19. The National Life Insurance Company of the U. S. advertised as follows: "The insured are by its policies permitted to travel or reside in any part of the world within the temperate zones, without the troublesome necessity of procuring a permit, or the imposition of an extra charge." And in England, "The *Positive* Life, 1870, announced its intention to abolish 'extra premiums' and issue an entirely free policy, without restrictions or limitations of any kind: hence persons insured in that office may travel to or reside in any climate; and may incur military, naval, or sea risks, at the ordinary premiums. It is possible that under this scheme the few may have to bear the burthen of the many." Walford, "Cyclopaedia," *opus cit.,* vol. 3, p. 145.

[43] In 1862, the N. Y. Superintendent stated: "Life Assurance, like all other human systems, is not yet perfect. Greater freedom of travel, without extra premium, will undoubtedly soon be demanded by the insured and yielded by the companies; . . . Great caution and prudence should undoubtedly be exercised in altering the ancient landmarks or in making any changes in the present system; but all modifications sanctioned by actuarial skill and business experience, adjusting its relations more in harmony with the public wants and necessities, or obviating any existing plausible objections, should be unhesitatingly adopted by all our companies." *N. Y. Ins. Rep.* (1862), vol. 3, pp. xxxvi, xxxvii. And two years later, " 'whole-world' policies harmonize more with American ideas than extra premiums, and any system of permits, however liberal." *N. Y. Ins. Rep.* (1864), vol. 5, p. lxxi. In 1867, an article in the insurance press pointed out that limitations and restrictions are properly things of the past. "We invite every reader to sit down and carefully peruse his Life Insurance Policy. It is a curiosity of literature. One would suppose it could only be written by some English Kant who had never been ten miles from his own cottage. A lion is supposed to lie hidden in every path. It perceives danger on every side. More than three-fourths of the ample space is taken up by restrictions and reservations. It abounds in negations. Like the moral law it thunders forth everywhere its 'Thou Shalt Not' . . . If you go 'South of the Southern Boundary of Kentucky' the whole

> 1. The limits of travel and residence allowed under this contract include those parts of the settled limits of the United States and British possessions which lie between the parallels of 50° and 36° 30′ north latitude; also that part of Tennessee which lies east of the Tennessee river; also those parts of Alabama, Georgia, South Carolina and North Carolina which lie north of the paralled of 34° north latitude and at the same time more than 100 miles from the Atlantic coast; also all the places within fifty miles of Atlanta, Georgia; also the settled limits of the United States which lie west of the 109th meridian of west longitude, except Alaska; also all of Europe. Also, before July 1 and after November 1 in any calendar year, those parts of the settled limits of the United States which lie south of the parallel 36° 30′ north latitude. Travel is permitted in first class vessels, by direct route along the coast of the United States and the British North American possessions, and between Europe and said British possessions and the United States, provided no port is entered not included in the limits above allowed for travel and residence. But travel and residence of the person at whose death this contract matures, *beyond* the above limits or at *other* seasons than are above stated, without permission in writing signed by one of the officers of the society as designated below, is prohibited.

(b) Court Decisions.

That the courts enforced the provisions of the contract is indicated by the decision in a case dealing with a policy on the life of the Bishop of Rhode Island.[45] In July, without notice to the company,[46] he took the place of the Bishop of Maryland, who was in Europe.

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transaction is void. . . . It has become a matter of doubt as to who carries the greater risk, the insured or the Company. . . . We notice that two or three live companies have adopted a plan in consonance with the ideas here expressed. They issue policies without limitations as to travel." *Insurance Monitor* (1867), vol. 15, p. 211. But a few years later another writer concluded "there is, undoubtedly, a reasonable foundation for the prevailing belief that the same individual is at greater risk of life or limb while sitting over a steamboat boiler or whizzing behind a locomotive, than when he is in the pursuit of an ordinary business." *Ibid.* (1871), vol. 19, p. 391.

[44] Fowler, *opus cit.,* p. 799.

[45] Nightingale and another, Executors, *v.* The State Mut. Life Ins. Co. (1857), 5 *R. I.* 38.

[46] The policy provided for forfeiture, if without consent endorsed on the policy, the insured "shall, between the first day of July and the fifteenth day of October, go into any other portion of the United States, beyond the limits of constant residence permitted herein, and be in such other portions of the United States more than five days." *Ibid.,* p. 40.

Ten days after going to Maryland the insured died of apoplexy. Although it was shown that his death was not in any way due to a change of climate, the court held the policy void in the following words:[47]

> The holy errand on which he went, the absence of all connection between his going and remaining, and the cause of his death, are not permitted to swerve our judgment from the legal effect of so plain a breach of a condition of this policy, upon the occurring of which it is, by its own terms, "to be void, and all payments thereon to be forfeited to the company."

So, too, in granting permission to go to California and return, a company restricted the insured to a choice *via* Cape Horn, or Vera Cruz. He returned *via* Panama and Chagres, thus forfeiting his insurance. Justice Merrick delivered the opinion of the court:[48]

> It is of no consequence that the route home taken by the assured was, or may have been, as the plaintiff offered to prove, the safest and shortest. The policy excluded him, if he would avail himself of the provisions and of the assurance contained in it, from being governed by what was advisable and expedient. It fixed the terms upon which the promise should be binding, and upon which it should be annulled. By those terms the parties are bound.

It was quite natural that a phrase as vague as "settled limits of the United States" should require court interpretation. The question arose in New York, and it was contended "that the words 'settled limits' mean not the fixed or established boundaries of the nation, but the 'region of the settlements,' and hence that Casler [the insured] had no right to go into the wild and unsettled portions of the country." The court ruled that "region of the settlements" was too indefinite in meaning, and therefore the phrase "settled limits of the United States" included the territories, organized and unorganized, though not within the region of settlements.[49]

It was also held that where the insured had been permitted to go by sea between certain ports "on first class decked vessels," he did not forfeit his insurance "by going as a steerage passenger in such a vessel."[50]

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[47] *Ibid.*, p. 42.

[48] Hathaway *v.* Trenton Mutual Life & Fire Ins. Co. (1853), 11 Cush. (*Mass.*), 448, 450.

[49] Casler *v.* Conn. Mut. Life Ins. Co. (1860), 22 *N. Y.* 427, 430. See also Forbes *v.* American Mut. Life Ins. Co. (1860), 15 Gray (*Mass.*), 249.

[50] Taylor *v.* Aetna Life Ins. Co. (1859), 13 Gray (*Mass.*), 434.

3. *Insurance on the Lives of Others.*

Attention should be called to the difference in English and American practice when policies were taken on the lives of others. One authority has thus stated the rule:[51]

> The legal effect of these conditions, where the policy is obtained upon the life of one over whose proceedings the beneficiary has no control, and of whose acts he may be wholly ignorant, may be very serious. The American policies, in terms, make no distinction between such cases and those in which the policy is issued directly to the insured. Under both, a violation of the condition forfeits the policy. The English companies, however, adopt a more liberal and equitable system, by making distinctions in favor of *bona fide* holders of the policies, similar to those inserted in case of suicide.[52]

4. *Later Development.*

Toward the close of the nineteenth century, many companies had eliminated these restrictions entirely, and others removed them after the policy had been in force a number of years.[53] In 1905, of fifty-one companies, twenty-four had no restriction; nine had it for one year; fourteen for two years; and four constantly.[54] With the legislation passed subsequent to the Armstrong investigation, the placing of restrictions upon residence and travel has tended to disappear entirely.[55] At the present time, of the fifty leading companies forty-nine have no restrictions.[56]

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[51] Bliss, George, *The Law of Life Insurance,* Baker, Voorhis & Co., N. Y., 2d Ed. (1874), p. 331.

[52] The English companies provided as follows: "It is hereby agreed that, should the within-named . . . go, without license, beyond the limits prescribed by this policy, this assurance shall, nevertheless, remain in full force and effect, provided the assured or his representatives shall, within fourteen days of such event coming to his knowledge, pay the additional premium usually required for the risk incurred." "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 243. See *ibid.,* p. 27; *ibid.,* vol. 26, p. 21.

[53] McCall, *opus cit.,* p. 48. Of 42 companies, 16 had no restriction in 1898; 6 companies imposed restrictions during the first year; 17 companies during the first two; one company during the first three; and two companies during the entire term.

[54] Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 41.

[55] See the discussion of incontestability, *supra,* ch. 7. For details of the legislation passed, see the general discussion and citations, *supra,* ch. 3, p. 49 *et seq.,* especially note 67.

[56] *Best's Illustrations,* N. Y. (Sept., 1930).

5. *Aviation.*

With the advent of aviation, it was at first the practice to impose certain restrictions, but these have now largely disappeared, at least as far as the ordinary citizen is concerned. After making a study of the practices of one hundred and thirty-five life companies in the United States and Canada, the writer of an article on Aviation Underwriting Rules and Practices summarized the general situation as follows:[57]

> It will be noted that generally no extra charge is made and no policy restrictions imposed in the case of applicants who, as passengers, make infrequent trips over recognized air routes—in planes operated by licensed pilots. The classification of air passenger risks depends in most cases on the nature and number of flights made in the previous year, and there is a graded scale of extra premium charges based on the amount of flying done. Where the air hazard is excessive, the risk is declined. Most of the companies do not insure aerial photographers, stunt-flyers, testers, pilots engaged in motion picture work, or instructors. The general practice is not to grant double indemnity or disability benefits where an extra aviation premium has been charged.

Where extra rates are charged there seems to be no uniformity either in the system of rating, or in the rates themselves.[58]

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[57] *The Weekly Underwriter* (July-Dec., 1929), vol. 121, p. 834. See also pp. 906, 960, 1012. See further Moir, Henry, "Aviation and Life Insurance," *ibid.,* May 10, 1930, p. 21. Other interesting articles on this point are the following. Sykes, L. G., & Smith, W. B., "Aviation and Life Insurance," *P. A. L. I. M. D.* (1926-27), vol. 14, pp. 117-136; Thomson, Gordon, "How Life Insurance Can Help Aviation," *P. A. L. C.* (1928), vol. 23, pp. 55-77; MacCracken, Hon. W. P., Jr., "The Relation of Aeronautics to Life Insurance," *Ibid.,* pp. 98-108; Robbins, C. B., "Should We Exclude the Aviation Hazard?" *Ibid.* (1929), vol. 24, pp. 240-257.

[58] Dunn, Capt. R. A., *Aviation and Life Insurance,* The Daniel Guggenheim Fund for the Promotion of Aeronautics, Inc., N. Y. (1930), pp. 10, 11. The author thus summarizes the practices of 109 leading companies of the U. S. and Canada:

"Sixty companies will now write contracts on the lives of pilots.

Eighty-four companies will write contracts on the lives of passengers.

Sixty companies will write contracts on the lives of both pilot and passenger.

Fifty-seven companies will write contracts on the lives of owners of airplanes.

Fifty-six companies will write contracts on the lives of pilots, passengers and owners of airplanes.

Thirty-two companies will write contracts on the lives of student pilots.

Thirty-two companies will write contracts on the lives of pilots, passengers, owners and students.

War Risk.

1. *In England.*

The additional hazard incident to military and naval service in time of war was recognized from the beginning in all the contracts affording long-term protection, and provision was made to exclude it from the coverage granted, or to demand an extra premium for its assumption. Members of the Society of Assurance for Widows and Orphans forfeited all interest in the funds of the society "upon becoming soldiers and dying in warfare." [59] At first the Equitable Society also held the policy void in case of death in war.[60] In 1764 it was resolved to insure military and naval persons not in active service at the ordinary rates, but in case of active service, a twenty-five per cent increase in premium was imposed. This was reduced in 1781 to twenty-two per cent.[61] The prospectus of the Westminster Society, founded in 1792, indicated that an additional premium of £ 1 per cent on the sum insured was required of persons in the army or navy.[62] The restrictions on military service thus established existed for many years in practically all policies.

2. *In the United States.*

In the United States a similar provision was incorporated in the contract, stipulating usually that the policy should be void and all premiums forfeited if, without consent, the insured should "enter into any military or naval service whatsoever (the militia not in actual service excepted)." [63] Until the outbreak of the Civil War the question was of no particular importance.

No company will write pilots exclusively. Twenty-four companies of the eighty-four accepting passenger contracts will accept passengers only.

One company of the fifty-seven companies writing contracts on owners' lives will write no other class of flying or flyers." See *ibid.*, Appendix 1, p. 37, for rates, and chart 1, p. 81, for practices.

[59] Walford, "History," *opus cit.*, vol. 25, p. 128. See also Appendices I, VI, VII. Some of the policies covering short terms made no such provision. Appendices II, III, V.

[60] *Supra*, note 26.

[61] Walford, "Cyclopaedia," *opus cit.*, vol. 2, p. 635. In 1874, no extra premium was any longer required "for service in the militia, or any yeomanry or volunteer corps within the United Kingdom during peace or war." *Ibid.*, p. 634.

[62] Walford, "History," *opus cit.*, vol. 26, pp. 21, 22.

[63] Appendices VIII, IX. See also Hudnut, *opus cit.*, p. 20.

(a) The Civil War.

Prior to 1861, "with the exception of the losses of the early marine companies consequent on the maritime depredations of the privateers of France and England and the Barbary pirates, . . . no American insurance company . . . had sustained, or at least paid, any loss consequent on wars waged by the United States."[64] The beginning of hostilities raised the question of the treatment to be accorded persons already insured and about to enter the service. At a meeting of the representatives of sixteen companies held in New York on April 19, 1861, certain definite rules and premium charges were agreed upon.[65] While these recommendations were generally adopted, some companies charged lower rates than suggested, while others refused to issue military permits under any conditions.[66] The War also presented the problem of the status of policies that had been issued to members of the Confederate armies and residents of the Southern states. Court decisions were not uniform.[67]

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[64] *War Risks,* Thrift Pub. Co., N. Y. (1898), p. 17. The only exception to the general rule seems to have been a policy issued by the New York Life. "A surgeon of the United States Army paid five per cent. extra to accompany the army to Mexico, the permit not to cover the risk of death in battle or from wounds received." Hudnut, *opus cit.,* p. 22.

[65] The recommendation made was for an extra premium of five per cent. per year on existing policies for service north of 34° north latitude, with an additional five per cent. for service south of this line. In addition, it was resolved "that the option be given to assured parties either to pay the extra premium, or have their policies renewed upon discharge from such service, upon satisfactory evidence of good health; and that in case of such risk being assumed by the assured the Companies should allow and pay the value of such policies in case of death during such service." *American Life Assurance Magazine,* vol. 3, pp. 23-24, quoted in War Risk, *opus cit.,* p. 20.

[66] One company set forth in a circular "that very serious reasons have forced the conclusion upon them that they cannot in this instance follow with safety the dictates of generous impulses . . ." Fowler, *opus cit.,* p. 722. For the practices of the various companies, see *ibid.,* pp. 720-725; *Chronicles of The Connecticut Mutual Life Insurance Company,* Hartford (1926), p. 11; *Historical Sketch of the Mutual Life Insurance Company of New York,* N. Y. (June, 1927), pp. 21, 22; *National Life Insurance Company, A History of Its Foundation and Development,* Montpelier (1925), p. 50; Barbey, J. A., *The Early History of the New England Mutual Life Insurance Company,* Boston (1923), pp. 24, 25; *Chronicles of The Penn Mutual Life Insurance Company,* Phila. (1922), pp. 29, 47. A particularly interesting account of conditions during this period is found in Hudnut, *opus cit.,* ch. 7.

[67] One company issued a statement to the effect that "The Company cannot insure or continue a policy on the life of any one in actual hostility to the Government of the United States, and comply with the terms of such contract, without the officers and members incurring and acting therein becoming sub-

(b) The Spanish-American War.

As was the case with other restrictions in the policy, those pertaining to military service were gradually qualified for the benefit of the insured or eliminated entirely. The first step was a provision that death must occur while in military or naval service before working a forfeiture. Later, participation in the service was prohibited only in time of war.[68] About the year 1890 the companies protected themselves against the war risk, either by limiting their liability to the reserve,[69] or requiring an extra premium such as it was found necessary to levy on all policyholders incurring the extra hazard.[70] At the time of the Spanish-American War,[71] which because of its short duration did not appreciably affect the practices of the com-

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ject to indictment therefor." War Risks, *opus cit.*, p. 18. See also, Hudnut, *opus cit.*, ch. 7. For the three lines of court decisions, see *supra*, ch. 8, Excuses for Nonpayment of Premiums.

[68] Seay, H. L., "Broadening Insurance Coverage to Meet Life's New Problems," *P. A. L. I. P.* (1928), vol. 22, p. 55.

[69] One company during the Spanish-American War charged no extra premium, but in case of death in Spanish territory, its liability was limited to one-half the policy face. Chronicles of The Penn Mutual, *opus cit.*, p. 79.

[70] Thompson, J. S., "Military Service and its Bearing on the Policy Contract," *T. A. S. A.* (1915), vol. 16, pp. 297, 298. Some typical clauses of the period are as follows:

1. "This policy does not insure against death occurring while engaged in military or naval service in time of war or in consequence of such service. . . . In any such case the policy shall be null and void but on its surrender within six months thereafter, with satisfactory proofs of death, the net reserve (computed by the American Table of Mortality and interest at 4½ per cent.) after deducting all indebtedness will be paid therefor."
2. "Without the written permission of the President or Secretary of the Company, the insured shall not during the continuance of the policy . . . engage in military or naval service of any kind in time of war."
3. "If within three years from date, the insured shall . . . enter or be engaged in any military or naval service whatever (except in time of peace) . . . this policy shall be null and void."
4. "The insured may without previous notice to the Company . . . engage in any military or naval service . . . but in such case he shall pay . . . for the risk of military or naval service in time of war . . . an extra premium equal to that charged by the Company in similar cases, which, if not paid at the time of assumption of the risk, shall not invalidate the contract but shall be a lien upon the policy and deducted therefrom with interest upon its payment."

[71] During this period the action of the companies was not uniform. Some companies made no extra charge for old policyholders, while others did. Some charged additional premiums, or used a lien system, or took war cost out of dividends of those in the service. For a detailed description of the plans of some 35 representative companies, see War Risks, *opus cit.*, pp. 49-67. At least one company made no charge for either old or new policyholders. *An Epoch in Life Insurance,* Metropolitan Life Ins. Co., N. Y. (1924), p. 85.

panies, a majority of the policies issued still contained limitations during their continuance.[72]

(c) The World War.

(i) England and Canada.

It was during the World War that the effects of military and naval service upon life insurance companies, particularly those of England and Canada, were indicated. At that time the great majority of policies issued in the United States were absolutely free of limitation, or carried restrictions only during the first year. The British practice was only slightly less liberal.[73] Before the seriousness of the situation became apparent, the companies were urged to waive the right to extra premiums on the grounds of patriotism,[74] but most insurance officials, recognizing the difference between war and minor catastrophes, realized that this was unjust to the other policyholders.[75] Both English and Canadian companies as a general rule did not charge extra premiums on account of the war service of old policyholders.[76] But a war clause requiring extra premiums was included in the contracts of new policyholders.[77] The rate of extra premium at first recommended by the British Life Offices' Association was seven guineas per cent, and by the Canadian Life Insurance Officers' Association, $50 per thousand dollars of insurance; but these rates proved inadequate and it was later deemed expedient to allow the companies to adjust the rate of extra premium as conditions warranted.[78] Provision was generally made for a refund at the end of the war of such part of the extra premium as was not required to defray claims arising out of the war service.[79]

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[72] *Ibid.,* p. 299; McCall, *opus cit.,* p. 49. Of 42 companies, 9 imposed no restrictions; 6 imposed a restriction during the first two years; and 27 imposed a constant restriction. The conditions were much the same in 1905. See Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 40.

[73] Thompson, *opus cit.,* p. 301. "There is no doubt as to the propriety of having modified, for example, the 'travel' clause of fifty years ago on the ground that the development of interstate and international communication has subtracted from travelling many of the hazards against which the old practice purported to guard the company, but recent history disproves the theory that the chance of war is remote and there is no doubt as to the deadly nature of modern conflict." Another official takes the same view. Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 42. "In the late Civil War, as well as in European wars a generation or more ago, the proportion of the insured to the general population was so small as to produce no serious result to the companies, even if they had no policy restrictions. This condition has been changed; about one-half of the male population is now carrying insurance of some kind. In case of a general or extensive war the companies without restrictions might be wiped out of existence by a few battles. Hence, the removal of all restrictions is simply liberality gone mad."

But as pointed out by one authority, "The average age at which insurance is taken is much in excess of the ages at which men are taken for the most hazardous war service, and further, the larger amounts are written at the older ages, thus lowering the possibilities of financial strain." Maclean, A. T., "Some Remarks on the War Clause," *T.A.S.A.* (1918), vol. 19, p. 241. In discussing the above article, Mr. P. H. Evans concluded that the insertion of a war clause in peace time serves no essential purpose. "The prompt cancellation of war restrictions in existing policies at the outbreak of the war and again in most cases when the armistice was signed indicates that in practice the chief function of the war clause is an instrument of selection." *T.A.S.A.* (1919), vol. 20, p. 212.

[74] This was founded upon one of three theories:

"First, that the Life offices should, before anything else, be patriotic;

"Second, that the Life Offices, being wealthy institutions, can easily afford to do without Extra Premiums; and

"Third, that it is hard on those who have volunteered to have to pay the Extra Premiums." Robertson, W. A., "The Trend of Modern Life Assurance," *J.C.I.I.* (1915), vol. 18, p. 164.

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[75] Maclean, *opus cit.,* pp. 239, 240. "Life insurance premiums, being based on an experience in which all normal hazards in life have had full play, will cover all such normal hazards. These include what might be called minor catastrophes, such as the death claims resulting from fires, floods, earthquakes, etc. . . .

"The element of war service, however, introduces quite another factor, and, generally speaking, much of the insurance which we are called upon to issue during war time is upon specially selected lives who are exposed to the dangers of war service, or at least liable to be called for some such service. It is thus evident that the extra hazard arising from disasters, such as have just been indicated, is of an entirely different nature from that introduced by the selection of specified individuals on whose lives insurance is to be issued after the declaration of war." See also Robertson, *opus cit.,* pp. 165-167. There is no reason why life insurance policyholders should pay for the nation as a whole. "An Insurance Office cannot, in justice to existing contracts, play the part of a philanthropist, and there is a limit of liberality beyond which no Office can go. . . . If the bonus of the Office commenced to decrease as the result of its patriotism, I question if even those persons who today might be inclined to commend the Office for its 'fine patriotism' and for its splendid 'conception of the meaning of Assurance,' will be prepared to continue to recommend the Office. After all, as I have pointed out, Insurance is a business, and must be worked by men of business upon business principles. This is a point which, in my opinion, is far too frequently overlooked. . . . In justice to all policy-holders, Extra Premiums must be received under restricted policies, and in the opinion of many these should be paid by the State, who could transfer the burden to the whole of the community." See further, Thompson, *opus cit.,* p. 302.

[76] *Ibid.*; Finlayson, G. D., "Insurance Supervision in Canada," *P. I. I. T.* (1926-27), vol. 28, pp. 63, 64. The companies in Canada were young, and there were many young lives, so that the effect of this exemption "was sufficiently great, in the case of small companies, to substantially reduce policyholders' dividends, and in some cases to require contributions to surplus by shareholders and directors." See also Wood, A. B., "The European War Risk with Particular Reference to the Practice and Experience of Canadian Companies," *T. A. S. A.* (1916), vol. 17, p. 50.

[77] Thompson, *opus cit.,* p. 302. A common stipulation was as follows: "The policy will be void if the assured shall, without the previous permission of the directors (which may be obtained on payment of such additional premium, either single or recurrent or on such reduction of the sum assured as the directors may think proper) . . . take part in any naval or military operations during actual warfare or in any insurrection or any expedition or operation of a warlike character either as a combatant or a non-combatant . . . or engage in any trade, business or occupation involving special or unusual risk to life or health unless the fact of such engagement or employment be mentioned in the policy." For a detailed analysis of the clauses and practices of Canadian companies, see Wood, *opus cit.,* p. 49 *et seq.*

(ii) United States.

In the United States, no uniform action was agreed upon as at the time of the Civil War.[80] In July, 1916, the Association of Life Insurance Presidents recommended the adoption of a war clause, but it seems to have "appeared in the contract of only one prominent company." [81] At the National Convention of Insurance Commissioners held at Des Moines in April, 1917, a resolution was passed to appoint a committee of five to confer with representatives of companies to agree on a uniform war service clause.[82] On April 28, 1917, the following recommendations were unanimously agreed upon by the representatives of the Insurance Commissioners and of the companies: [83]

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[78] *Ibid.*, pp. 50, 54, 61. The rate in England varied from 10 guineas to as high as 30 guineas per cent, which was practically prohibitive. In Canada it varied between 7½ and 15 per cent.

[79] *Ibid.*, p. 363, discussion. The writer points out that such refund should not be made at too early a date, because of the impaired health of returning policyholders.

[80] National Life Insurance Company, *opus cit.*, p. 152.

[81] Maclean, "Some Remarks," *opus cit.*, pp. 240-247. Of 73 companies, the term of restriction was as follows: 4 companies limited the restriction to 2 years; 40 companies to 5 years; 1 company to 8 years; 4 companies to 10 years; and 24 companies provided for a constant restriction. "Of 76 representative American companies, 33 [charged] an extra for all service, while 43 [charged] for foreign service only." It was probably better to charge for all service.

[82] *P. N. C. I. C.* (1917), vol. 48, p. 153.

[83] *Ibid.*, pp. 154, 155. The wording of the clause agreed upon was as follows:

"If within five years from the date of this policy the insured shall engage in any military or naval service in time of war, the liability of the company in the event of death of the insured while so engaged, or within six months thereafter, will be limited to the return of the premiums paid hereon, exclusive of any extra premium paid for military or naval service, less any indebtedness to the company hereon; unless before engaging in such service or within one month (of not less than thirty days), or at the time of paying

1. The military clause shall cover the entire period of military or naval service, in time of war, if commenced within five years of the register date.
2. The clause shall call for "such extra premiums as may be fixed by the company."
3. The extra premium charged for the present shall be at the rate of not less than $37.50 per annum per thousand of insurance.
4. In the event of death during service, or within six months after termination thereof, the liability of the company shall, unless all required extra premiums have been paid, be limited to an amount not exceeding the total premiums paid on the policy, exclusive of any extra premiums which may have been paid for military or naval service.
5. The clause shall require payment of the extra premium within thirty-one (31) days after entering upon service or, if already in service, along with the first premium on the policy.
6. A refund will be made of any extra premiums not required.

Although the question of war risk did not attain the importance in the United States which it reached in England and Canada because of the action of the Federal government,[84] the general practice was to waive what few restrictions existed in the case of old policyholders and to charge new applicants an additional premium.[85] In his Fifth Annual Report, Superintendent William Barnes expressed in the following words his prophetic views regarding the best method of providing for death and disability arising from military service: [86]

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the first premium due hereon, if the insured shall be then so engaged, the insured shall pay to the company at its home office in [   ] such extra premium as may be required by the company, and in like manner shall pay annually thereafter on each anniversary of this policy, or within one month (of not less than thirty days), while the insured shall continue to be so engaged, such extra premium as may be required by the company.

"Within one year after the termination of the war the company will return such portion of the extra premiums as in its judgment will not be required to cover the extra hazard."

[84] *Ibid.*, p. 158. Of 235 companies, 93 had accepted wholly or substantially the recommendations of the committee, 64 had declined, and 78 had either not answered the questionnaire or had been undecided. "Companies, both large and small, and located in all parts of the country, [were] included in each group." On August 29, 1917, the committee reported, *ibid.*, p. 154, "The matter has quietly subsided, due chiefly to the fact that since your committee was appointed, the Federal Government has had under consideration an elaborate scheme to provide life and disability insurance for those in both the naval and military service of the United States."

[85] An Epoch in Life Insurance, *opus cit.*, p. 103. See also *supra*, note 73.

[86] *N. Y. Ins. Rep.* (1864), vol. 5, p. lxxiii.

> It is to be regretted that in the early stages of our existing civil war some well digested scheme had not been adopted for insuring the lives, limbs and health of all the privates and officers in our Army and Navy, either by the government directly or through the agency of one or two strong and well organized companies; such insurances to be made compulsory, and to operate as an entire substitute for the very onerous pension claims which will hereafter prove an exhausting and oppressive draft on our national resources.

The Bureau of War Risk Insurance in the Treasury Department was established on September 2, 1914, for the purpose of insuring American vessels, freight, and cargo against war losses.[87] The original law was amended by a subsequent act, approved October 6, 1917, providing for insurance against death and disability occurring while in the military service of the country.[88] Congress also passed a statute for the purpose of keeping existing insurance in force.[89]

3. *Meaning of Military Service.*

Just what constitutes military service is open to question. With regard to the auxiliary services, for example, are newspaper correspondents, and members of the Red Cross, Y. M. C. A., etc., to be considered as participating in war activities within the meaning of the policy? The consensus of opinion indicates that in such cases the incontestable clause will bar any right of action on the part of the company after the lapse of the required period fixed either in the contract or by law.[90] With respect to the clause itself, restricting coverage in case of military service, it has been urged that it is contrary to public policy since it constitutes "an incentive or agreement not to enlist, or a reason to evade the draft laws." [91] But such contention has not been upheld.[92] Some courts have held that the term "military service" includes only such death and injuries as result from war and not those incident to peace as well as war.[93] The contrary view has been thus stated by Chief Justice Johnston: [94]

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[87] U. S. Stat., 2nd Sess., 63rd Cong., pt. 1, ch. 293.

[88] U. S. Stat., 1st Sess., 65th Cong. (1917), ch. 105. Art. IV, sect. 403, provided "That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum."

Section 404 provided "That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. . . ."

[89] U. S. Stat., 2nd Sess., 65th Cong. (1917-18), pt. 1, ch. 20, art. IV. Soldiers' and Sailors' Civil Relief Act, approved March 8, 1918.

[90] For a discussion of this point see Maclean, "Some Remarks," *opus cit.*, pp. 243-245. See also *supra*, ch. 7, incontestability. In 1871, the courts of New York held that a policyholder killed while employed in constructing a

> We are unable to agree with those decisions holding that the expression "engaged in military service" means the performance of functions in actual war or in resisting the hostile action of the enemy. As used in the policy in question the term means no more than the insured was in the military service. Status and not causation is the ground for the limitation and it is plainly provided that anyone engaged in military service may, by obtaining consent of the insurer and paying added premiums, keep alive the whole insurance provided by the policy. Nor do we find anything in the conditions of the policy that gives ground for a distinction between those who volunteer and enter the service by enlistment and those who are taken in under the selective-service act.

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railway bridge under the direction of military authorities of the United States, was not in military service, and that he was not a casualty of the war, either of which would have avoided the policy. Welts *v.* Conn. Mut. Life Ins. Co. (1871), 48 *N. Y.* 34.

[91] Marks *v.* Supreme Tribe of Ben Hur (1921), 191 *Ky.* 385, 387.

[92] *Ibid.,* p. 386. "An insurance company or benefit society has the right to select the particular risks it is willing to assume and there is no public policy against a contract of this sort exempting the insurance company in advance from liability for the death of the insured while in the military or naval service of the government." See *Joyce on Insurance,* § 2237.

[93] Thus where the insured was accidentally killed in a training camp by gunshot wound, the policy was held not void because it was not a result of military service. Malone *v.* State Life Ins. Co. (1919), 202 *Mo.* App. 499, 506. And where the insured, en route from New York to Texas, contracted influenza and died it was held that "the death of the insured . . . was in no sense caused by performing any military service or in consequence of being engaged in military service." But the court added that a clause "death while in the service in the army or navy of the government in time of war is not a risk covered . . ." would have excluded payment. Benham *v.* American Cent. Life Ins. Co. (1919), 140 *Ark.* 612, 617, 618. See also Miller *v.* Ill. Bankers' Life Ass'n (1919), 138 *Ark.* 442.

[94] Bradshaw *v.* Farmers & Bankers Life Ins. Co. (1920), 107 *Kan.* 681, 689. See also Huntington *v.* Fraternal Reserve Ass'n (1921), 173 *Wis.* 582. See further, McGivney, E. J., "The Interpretation of Clauses in Life Insurance Policies, Limiting Liability for the Risk of Military and Naval Service in Time of War," *P. A. L. I. C.* (1913-1921), Paper 24, pp. 1-12; Brosmith, William, "Effect of War on Contracts of Life Insurance," *ibid.* Paper 30, pp. 1-13.

As indicated above, with the proclamation of peace the war clause in modern policies again tended to disappear.[95] At the present time, of the fifty leading companies only eight include any war restriction in the incontestable clause, and the great majority of policies are unrestricted from date of issue.[96]

Restrictions Voiding the Policy

Certain hazards have been excluded from the coverage of life insurance policies either because their nature is such that the payment of any reasonable additional premium would be insufficient to compensate the company for the risk assumed, or because their assumption would contravene public policy. The earlier policies therefore generally forfeited payment in the case of death arising as a result of suicide, duelling, violation of law, or execution.

Suicide.

The exclusion of suicide as one of the risks assumed by the company was early provided for in life insurance contracts. Such a stipulation was effective from the beginning with respect to policies issued by the Equitable Society.[97] Other companies both in England and America had similar provisions.[98] For convenience in analysis the effect of suicide may be discussed with respect to the inclusion or exclusion of some limiting clause in the contract.

1. *When Not Excepted in the Policy.*

The generally accepted rule in this country holds the insurance company liable for payment in case of suicide, even though committed while sane, where the policy is silent on the question.[99] Since mortality tables take into account all deaths, suicide is not impliedly excluded,[100] although it has been held that a secret intent on the part of the insured, at the time of obtaining insurance, to commit suicide, vitiates the policy.[101] The United States Supreme Court, however, formerly held to the view that in the absence of a provision, suicide [102] was not a risk assumed. The reasoning of the court was thus set forth by Mr. Justice Harlan in Ritter *v.* Mutual Life Insurance Company of New York: [103]

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[95] *Supra,* note 73.

[96] *Best's Illustrations,* N. Y. (Sept., 1930). See also *supra,* ch. 7, incontestability. The supplementary contracts relating to disability and double indemnity are usually restricted in various ways. See *infra.,* ch. 12.

[97] Walford, "Cyclopaedia," *opus cit.,* vol. 2, p. 636. The provision dates back to the time of the Roman gilds; later organizations of similar type also frequently included in their rules some stipulation for their protection against claims which were not the result of "purely fortuitous circumstances." Jack, A. F., *"An Introduction to the History of Life Assurance."* London (1912), p. 21, footnote 143.

[98] Appendices III, V, VII, VIII, IX. Some policies, however, made no such provision. Appendices I, VI. Even as late as 1877 the general rule was to forfeit the policy in the event of suicide, "whether the assured has been of unsound mind or not." "Insurance and Suicide," *J. I. A.* (1878), vol. 20, p. 349. Abridged article from the *British Medical Journal,* Feb. 17, 1877.

> When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract.
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> There is another consideration supporting the contention that death intentionally caused by the act of the assured when in sound mind—the policy being silent as to suicide—is not to be deemed to have been within the contemplation of the parties; that is, that a different view would attribute to them a purpose to make a contract that could not be enforced without injury to the public. A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment.

After discussing the decision in Fauntleroy's case,[104] the court continued:[105]

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[99] Vance, W. R., *Handbook of the Law of Insurance,* West Pub. Co., St. Paul, 2d ed. (1930), p. 802; Patterson *v.* Natural Prem. Mut. Life Ins. Co. (1898), 100 *Wis.* 118, 122.

[100] Fields *v.* Metropolitan Life Ins. Co. (1922), 147 *Tenn.* 464, 468.

[101] Parker *v.* The Des Moines Life Ass'n (1899), 108 *Iowa* 117.

[102] As to the interpretation of "suicide," see *infra.*

[103] (1898) 169 *U. S.* 139, 154. But in Northwestern Life Ins. Co. *v.* Johnson (1920), 254 *U. S.* 96, Mr. Justice Holmes ruled that a clause whereby the company assumed the risk of suicide after two years is not against public policy. In commenting on this decision, one writer states that "the Ritter Case was tacitly repudiated by that process of casual reference which Mr. Justice Holmes uses so gracefully." Vance, W. R., "Suicide as a Defense in Life Insurance" (1920-21), 30 *Yale L. J.* 401. The Ritter case was followed in only one state. *Ibid.*

[104] For a discussion of Amicable Society *v.* Bolland (1830), 4 Bli. N. S. (*Eng.*), 194 (Fauntleroy's Case), see *infra,* execution. For the application of the same principle, although *obiter dicta,* see Hartman *v.* Keystone Ins. Co.

> The same considerations and reasoning which support the doctrine seem to lead, of necessity, to the conclusion, that voluntary, criminal self-destruction, suicide, as defined at common law, should be implied as an exception to the liability of the insurer, or, rather, as not within the risks contemplated by the parties, reluctant as the courts may be to introduce by construction or implication exceptions into such contracts, which usually contain special exceptions.

In New York the liability of the company depends upon whether or not the beneficiary has a vested interest in the policy. As stated by the court,[106]

> Here, unless the policy is payable to a beneficiary who has a vested right in it, the insurer is not liable, where the insured takes his own life, although the policy contains no such provision. If however, the policy is payable to a beneficiary who has a vested right in it, then the suicide of the insured is no defense to an action by the beneficiary.

2. *When Excepted in the Policy.*

(a) English Rule—Massachusetts and New York.

Various words, among them "commit suicide," "takes his own life," "die by his own hands" and "self-destruction," have been used by the companies to exclude this hazard, but they have been interpreted by the courts as being synonymous.[107] The first important English case involving such a clause was that of Borradaile *v.* Hunter.[108] The insured threw himself into the Thames and was drowned. The jury found that he "voluntarily threw himself into the water, knowing at the time that he should thereby destroy his life, and intending thereby to do so; but that at the time of committing the act he was not capable of judging between right and wrong." The court ruled, Tindal, Chief Justice dissenting, "that the policy was avoided, as the proviso included all acts of volentary self-destruction, and was not limited by the accompanying

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(1853), 21 *Pa.* St. 466, 479, and Supreme Commandery of the Knights of the Golden Rule *v.* Ainsworth (1882), 71 *Ala.* 436, 447: "An express contract to pay the insurance money to the assured, in the event he committed suicide, an increased premium being paid because of the risk, there could be but little, if any, hesitancy in repudiating as offensive to law and good morals."

[105] Ritter *v.* Mutual Life Ins. Co. of N. Y. (1898), 169 *U. S.* 139, 154.

[106] Smith *v.* Metropolitan Life Ins. Co. (1925), 211 *N. Y.* S. 755, 758, citing Riggs *v.* Palmer, 115 *N. Y.* 506.

[107] Life Ins. Co. *v.* Terry (1872), 15 Wall. (*U. S.*) 580, 591.

[108] (1843) 5 Mann. & Gr. (*Eng.*) 639.

provisoes to acts of *felonious* suicide." Justice Erskine delivered the judgment of the court in the following words:[109]

> It has been argued, on the part of the plaintiff, that, as the very object of a life insurance is, to secure a provision for a surviving family against the fatal consequences of decease in the assured, if the act occasioning the death can be traced as the result of a diseased mind, the case comes within the main scope and object of the contract of insurance. This argument would have been unanswerable if the policy had been wholly silent on the subject, as in the case of The Amicable Life Insurance Company *v.* Bolland; or if the proviso had been couched in terms pointed only to acts resulting from a criminal intention; but the very object of a proviso like the present, is to take out of the operation of the general terms of the policy, death resulting from causes which would otherwise fall within the general scope of the contract....

A fair inference is that "the parties intended to include all wilfull acts of self-destruction whatever might be the moral responsibility of the assured at the time."

Both the New York and Massachusetts courts have followed the rule thus established, namely, that self-destruction forfeits the policy where the insured's act is voluntary, even though committed during insanity. Originally the courts in New York seemed to dissent, as may be inferred from the following decision:[110]

> It was not contended on the part of the defendant, that the policy would be avoided, by a mere *accidental* destruction of life by the party himself. It was urged, that it would be, if the act was done *intentionally,* although under circumstances which would exempt the party from all moral culpability; it was insisted, that the expression must be taken to mean, a death *by his own act.* It seems to me, that this is a yielding of the whole question. An insane man, incapable of discerning between right and wrong, can form no intentions, his acts are not the result of thought or reason, and no more the subject of punishment than those which are produced by *accident;* the acts of a madman, which are the offspring of the disease, subject him to no criminal responsibility. If the insured, while engaged in his trade as housejoiner, had accidentally fallen through an opening in the chamber of a house he was constructing, and lost his life, the argument concedes that the insurer would

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[109] *Ibid.,* pp. 658, 659. The clause provided that the policy would be void if the insured should die by his own hands.

[110] Breasted *v.* Farmers' Loan & Trust Co. (1853), 4 Selden (*N. Y.*) 299, 305. The case had been before the court ten years earlier. Breasted *v.* The Farmers' Loan & Trust Co. (1843), 4 Hill (*N. Y.*) 73.

> have been liable; the reason is, that the mind did not concur with the act. How can this differ in principle from a death in a fit of insanity, when the party had no mind to concur in or oppose the act.
>
> It must occur to every prudent man, seeking to make provision for his family, by an insurance on his life, that insanity is one of the diseases which may terminate his being. It is said, the defendants did not insure the continuance of the testator's reason; nor did they, in terms, insure him against the small pox or scarlet fever, but had he died of either disease, no doubt the defendants would have been liable. They insured continuance of his life; what difference can it make to them, or to him, whether it is terminated by the ordinary course of a disease in his bed, or whether in a fit of delirium he ends it himself? In each case, the death is occasioned by means within the meaning of the policy, if the exception contemplates, as I think it does, the destruction of life by the intestate, while a rational agent, responsible for his acts.
>
> It is competent, no doubt, for the insurer so to frame his policy as to exempt him from liability for a death occasioned in a fit of insanity; the parties have not done so in the present case.

But after 1873 there was no question of the court's attitude. Justice Rapallo distinguished the above case and decided that in order to bind the company, "the party must have been insane to such a degree as to render him unconscious that the act he did would cause his death, or must have committed it under the influence of some insane impulse which he could not resist. His mind must have been so far gone that it was not moving to the act. It is not sufficient that his moral sense was so impaired as to deprive the act of its criminal character."[111]

The attitude of the Massachusetts courts was determined in a decision handed down by Chief Justice Bigelow, stating in part as follows:[112]

> Insanity does not necessarily operate to deprive its subjects of their hopes and fears, or the other mental emotions which agitate and influence the minds of persons in the full possession of their faculties.

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[111] Van Zandt *v.* The Mutual Ben. Life Ins. Co. (1873), 55 *N. Y.* 169, 173. "So far as conditions of public policy have any place in determining such a question, they are undoubtedly in favor of confining the exceptions to the condition to cases in which the self-destruction is clearly shown to have been accidental or involuntary." *Ibid.*, p. 177.

[112] Dean *v.* American Mut. Life Ins. Co. (1862), 4 Allen (*Mass.*) 96, 100-103.

> If the suicide was an act of volition, however excited or impelled, it may in a just sense he said that he died by his own hand. But beyond this, it would not be reasonable to extend the meaning of the proviso. If the death was caused by accident, by superior and overwhelming force, in the madness of delirium or under any combination of circumstances from which it may be fairly inferred that the act of self-destruction was not the result of the will or intention of the party adapting means to the end, and contemplating the physical nature and effects of the act, then it may be justly held to be a loss not excepted, within the meaning of the proviso.

(b) American Rule.

The Supreme Court of the United States, followed by the great majority of the state courts, has adopted a different rule.[113] In the case of Life Insurance Company *v.* Terry, Mr. Justice Hunt held the rule on the question to be this: [114]

> If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.

3. *When the Act Is Involuntary.*

All courts are in agreement that where the insured is insane to the extent that his will does not function, the company is liable.[115] "Suicide involves the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-slaughter by an insane man or a lunatic is not an act of suicide within the meaning of the law." [116] The reason for the rule was well stated in a Michigan case.[117]

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[113] Vance, "Handbook," *opus cit.*, p. 809.

[114] (1872) 15 Wall. (*U. S.*) 580, 590. See also the charge to the jury by Woodruff, J., in Gay *v.* Union Mut. Life Ins. Co. (1871; *U. S.* Cir. Ct., 2d cir.), 9 Blatch. 142, 155.

[115] Borradaile *v.* Hunter (1843), 5 Mann. & Gr. (*Eng.*) 639; Dean *v.* American Mut. Life Ins. Co. (1862), 4 Allen (*Mass.*) 96, 102; Van Zandt *v.* Mutual Benefit Life Ins. Co. (1873), 55 *N. Y.* 169, 173; Ritter *v.* Mutual Life Ins. Co. of N. Y. (1898), 169 *U. S.* 139, 160. ". . . if the suicide or self-destruction takes place when the assured is *insane* and not accountable for his acts, the rule arising from public policy does not apply, and his representatives are entitled to the policy money," quoting *Bunyon on Insurance*, 3d ed., p. 96.

> The very object of life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands, in the case of one *non compos,* is as much the result of diseases as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical.

But the law presumes a person sane in the absence of proof to the contrary.[118]

4. *Presumption of Accidental Death.*

Where the circumstances surrounding the death of the insured leave in doubt the question as to whether he died voluntarily or accidentally, the presumption is against suicide because of the instinct of self-preservation and the natural love of life.[119]

5. *Sane or Insane.*

As a result of the court decisions binding the company where the insured committed suicide while insane, the practice developed of restricting liability for self-destruction "whether sane or insane." [120] Courts have uniformly upheld such provisions.[121] Because of the doubt which may arise, "it is not at all improper that insurance companies should, by this clause, render unnecessary any inquiry into the mental condition of the insured at the time of his self-destruction." [122] But as a general rule the clause applies only to self-destruction intentionally committed, and does not include accidental self-killing.[123]

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[116] Breasted *v.* The Farmers' Loan & Trust Co. (1843), 4 Hill (*N. Y.*) 73, 75: "A provision in a life-policy that it is to be deemed void in case the assured shall '*die by his own hand,*' imports a *death by suicide;* i. e., an act of *criminal* self-destruction. Accordingly, in an action on such policy the underwriters will be liable though it appears that the insured *drowned himself,* provided the act was done *in a fit of insanity.*" See also Matter of Delinousha *v.* National Biscuit Co. (1928), 248 *N. Y.* 93, 95.

[117] John Hancock Mut. Life Ins. Co. *v.* Moore (1876), 34 *Mich.* 41, 46. See also Shipman *v.* Protected Home Circle (1903), 174 *N. Y.* 398, 405. By Werner, J.: "Intent is of the essence of the act and this presupposes reason or sanity. Thus the unqualified finding of the learned trial court that plaintiff's husband committed suicide is in effect a determination that it was the intentional act of a sane man. Aside from this, however, there is the presumption of sanity which must be entertained in the absence of proof. Insanity cannot be predicated simply upon the act of self-destruction, for human experience has shown that sane men have taken their own lives."

[118] *Ibid.;* Wallace *v.* United Order of the Golden Cross (1919), 118 *Me.* 184, 188. "Suicide may be used as evidence of insanity, but standing alone, it is insufficient to establish it." See also Ritter *v.* Mutual Life Ins. Co. of N. Y. (1898), 169 *U. S.* 139, 147.

[119] Carnes *v.* Iowa State Traveling Men's Ass'n (1898), 106 *Iowa* 281, 284; Travellers' Ins. Co. *v.* McConkey (1888), 127 *U. S.* 661, 664; N. Y. Life Ins. Co. *v.* Ross (1928) C. C. A. 6) 30 *F.* (2d) 80.

6. *Insurance on the Life of Another.*

In England the practice early became common of paying claims resulting from suicide where the policy was taken out upon the life of another. But the Equitable Society and the Westminster Society had stipulations to this effect.[124] That such clauses were in general use in 1854 is indicated in the decision of Moore *v.* Woolsey,[125] in which the court ruled that they were unobjectionable. Many companies also paid the policy in case of assignment.[126] In America, however, no such distinction was customary,[127] although some courts have held that where the policy is payable to a third party, suicide will not work a forfeiture of the insurance.[128]

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[120] It is interesting to note that such wording had been adopted by the Pennsylvania Company. Appendix VIII.

[121] Bigelow *v.* Berkshire Life Ins. Co. (1876), 93 *U. S.* 284.

[122] Silliman *v.* International Life Ins. Co. (1914), 131 *Tenn.* 303, 314.

[123] Union Mut. Life Ins. Co. *v.* Payne (1900; C. C. A. 5), 105 *F.* 172, 178. South Carolina seems to be an exception. Hartin *v.* Sovereign Camp W. O. W. (1923), 124 *S. C.* 397.

[124] Walford, "Cyclopaedia," *opus cit.,* p. 636. In 1770 it was resolved by the directors of the Equitable Society, "That the exceptions respecting persons dying by their own hands or by the hands of justice, which have been usually inserted in policies granted by this Society, be in future omitted upon every assurance made by any person upon the life of another." See also Walford, "History," *opus cit.,* vol. 26, p. 21.

[125] (1854), 4 Ell. & Bl. (*Eng.*) 243, 255: "That the condition under discussion may promote evil by leading to suicide, is a very remote and improbable contingency: . . . When we are called upon to nullify a contract on the ground of public policy, we must take care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind." The wording of the clause was as follows, p. 245: "8. Policies effected by persons on their own lives, who shall die by duelling or by their own hands, or by the hands of justice, will become void, so far as regards the executors or administrators of the person so dying, but will remain in force only to the extent of any bonâ fide interest which may have been acquired by any other person under an actual assignment by deed for a valuable consideration in money, or by way of security or indemnity, or by virtue of any legal or equitable lien as a security for money, upon proof of the extent of such interest being given to the directors to their satisfaction."

[126] Forfeiture for suicide, "we believe, never applies to assurances effected by one person on the life of another. As regards those taken out by an individual on his own life, it is still very generally retained, and that

7. *Legislation.*

The changing attitude of public opinion regarding forfeitures in case of suicide is evidenced by various types of statutes enacted by some of the state legislatures. Over half a century ago Georgia provided that "death by suicide, or by the hands of justice, either punative or preventive, releases the insurer from the obligation of his contract." [129] At the present time, where legislation has been passed, it usually provides that suicide may not be set up as a defense after one or two years.[130] Missouri has a statute which requires the insurance company to prove "to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy," if the defense of suicide is set up.[131] It has been upheld by the United States Supreme Court in Whitfield *v.* Aetna Life Insurance Company,[132] Mr. Justice Harlan ruling,

> That the statute is a legitimate exertion of power by the State cannot be successfully disputed.
>
> Even if the statute in question could be fairly regarded by the court as inconsistent with public policy or sound morality, it cannot for that reason

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notwithstanding the policy may have been assigned. A great many Offices, however, forego it if the assignment has existed a given time (say six or twelve months) at the date of death; . . ." "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 243. See also "Insurance and Suicide," *opus cit.*, pp. 349, 350.

[127] Bliss, *opus cit.*, p. 331.

[128] Vance, "Handbook," *opus cit.*, pp. 806, 808. There seems "to be no good reason why the beneficiary's rights under the policy should not be defeated by the insured's violation of the implied condition against suicide, as well as by his default in the payment of premiums, or his violation of any other condition of the contract."

[129] Ga. Code (1873), p. 488, § 2822. This provision is still in effect. Ga. Ins. Laws (Jan., 1930), p. 98, § 2500. But it may be waived by the company. Mutual Life Ins. Co. *v.* Dusden, 72 S. E. 295.

[130] New Mex. Ins. Code (1929), § 61, (14) (c); N. D. L. (1911), ch. 157; R. C. (1905), § 6064; Va. Ins. L. ch. 168, § 4228. This provides that suicide or execution may not be set up as a defense unless there is an express limitation in the policy.

[131] Mo. Rev. St. (1879), § 5982; *Ibid.* (1889), § 5855; *Ibid.* (1899), § 7896. Nor can the effect of this statute be nullified by policy provision. The difficulty of proving such intention may be supposed.

[132] (1907), 205 *U. S.* 489, 495.

> alone be disregarded; for it is the province of the State, by its legislature, to adopt such a policy as it deems best, provided it does not, in so doing, come into conflict with the constitution of the State or the Constitution of the United States. There is no such conflict here.

In 1903, Colorado passed a law to the effect that suicide "shall not be a defense against the payment of a life insurance policy, whether said suicide was voluntary or involuntary, and whether said policy holder was sane or insane." [133] This was indeed a drastic provision, but it was upheld, nevertheless, by the Supreme Court of Colorado.[134]

In Texas a company is permitted by law to issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand.[135] Although not sustained by the Supreme Court of Ohio, it was contended that a clause providing for a return of premium in case of suicide within two years was a violation of a statute [136] prohibiting any mode of settlement at maturity of less value than the amount insured.[137]

Investigation in the case of suicide is futile. No affirmative action can be taken by a company to protect itself against self-destruction. In general, therefore, legislatures realize that some limitation is necessary.[138]

8. *Company Practice.*

In order to mitigate the harshness of absolute forfeiture in case of suicide, various modifications were introduced. In 1817, the Equitable Society provided for some return where the insured died by his own hands.[139] Such stipulations became increasingly popular, and were held not to offer an encouragement to suicide.[140] In the United States, one company eliminated the suicide clause from its policies as early as 1850.[141] After the Civil War there was considerable discussion of the merits of paying suicide claims, but opinions were divided. Some advocated the payment of the full policy face for the following reason:[142]

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[133] Col. L. (1903), ch. 119. It was amended in 1913 to provide that suicide *after the first year* shall be no defense. *Ibid.* (1913), p. 358, § 59.

[134] Head Camp Woodmen of the World *v.* Sloss (1910; *Col.* Supreme Ct.), 112 Pac. 49. This decision was cited with approval in Continental Casualty Co. *v.* Agee (1924), 3 *F.* (2d) 978, and Business Men's Assur. Co. of America *v.* Scott (1927), 17 *F.* (2d) 4.

[135] Tex. Rev. St. (1925), Title 28, ch. 3, art. 4733, § 3.

[136] Ohio Gen. Code, § 9421, par. 4.

[137] Western & Southern Life Ins. Co. *v.* Horn (1919), 100 *Ohio* St. 478.

[138] Ayres, W. S., "Incontestable and Suicide Clauses," *P. A. L. I. C.* (1922-24), vol. 2, p. 59.

[139] Walford, "Cyclopaedia," *opus cit.,* p. 636. "Ordered, that in all future cases, if a member insured on his own life, and who has paid at least 5 annual premiums, shall die by his own hands, and not felo de se, a sum equal to what the Society would have paid for the purchase of his interest,

> We are of the opinion that, with some suitable restriction as to time, the full payment of the insurance is the true solution of the question. We are convinced this practice will rapidly become general, as, indeed, the only result which an impartial consideration of the matter will bring about. We cannot believe that any man who had suicide in contemplation was ever deterred by the thought of his insurance, and we find it equally difficult to conclude that such an intention was ever stimulated by the reflection that his insurance would remain unvitiated by his mad act. . . . But if we cannot credit the majority of offices with so enlightened a policy, there is yet another course open—viz., the return of whatever premiums may have been paid. This is the method commonly, we might almost say invariably, adopted by those offices whose policies contain provisions against the contingency of suicide. . . . It cannot be doubted that any office which declines to follow even this latter course takes a very low estimate of its functions and responsibilities and enters upon a course, the certain end of which will be public reprobation and distrust.

But the Insurance Monitor disagreed with this English view in no uncertain terms.[143]

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if it had been sold the day previous to his decease, shall be paid to his representative, provided that the interest in such insurance remained in the assured at the time of his decease." In 1855, the qualification of five annual premiums was removed.

[140] Moore *v.* Woolsey (1854), 4 Ell. & Bl. 243. See also "Life Insurance and Suicide," *opus cit.,* pp. 350, 353. The writer points out that the existence of insurance does not seem to affect the rate of suicide where there is a probationary period to prevent the policyholder from defrauding the company. "After thirteen months, the policy should be a positive one, and the question of soundness or unsoundness of mind should not be raised at all." See further "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 243. "The forfeiture of a policy from death happening under such circumstances years after it has been effected, is quite unjustifiable, particularly as the ordinary rates of premium may, as we know, be looked upon as including the risk."

[141] Hudnut, *opus cit.,* pp. 35, 161, footnote. See also *Insurance Journal,* Hartford (1873), p. 44.

[142] *Insurance Monitor* (1872), vol. 20, p. 501.

[143] *Ibid.* The thought being that the threat of forfeiture will restrain people from suicide. See also *Insurance Monitor* (1883), vol. 31, p. 336.

> We believe that if all the Companies of the world would unite in an outspoken and positive declaration that they would, by all the means in their power, fight and defeat claims growing out of suicide, the aggregate of good to the communities at large would far out-weigh the suffering on the other hand as to make it sink into comparative insignificance.

At the beginning of the twentieth century, however, the life policy had come to be widely recognized as a commercial contract, whose value depended upon its indisputability, and some limit on the suicide exclusion was favored.[144] Most of the insurance written at this time was payable in case of suicide after one or two years.[145] In 1905, only one of fifty-one companies forfeited the policy in case of suicide occurring at any time.[146] Liberality in this respect, somewhat stimulated by the legislation passed subsequent to the Armstrong and other investigations, has increased still further, so that at the present time, of fifty leading companies, thirty-four exclude suicide only during the first year, and the remainder, during the first two years.[147] The reasons for such limitations have been well stated in Silliman *v.* International Life Insurance Company,[148] as follows:

> It is equally commendable that the limit should be brief, as being, on the one hand, sufficient to enable the company to satisfy itself of the honest purposes of the insured, while protecting itself against possible fraud on his part; and at the same time it is desirable that the insured should not feel that he should, during the whole life of the policy, be unprotected against the possibility of bringing death to himself by his own hand through the blameless misfortune of losing his mental faculties.

And in *ibid.* (1881), vol. 29, p. 599: "We have, therefore, always advocated the rejection of suicide claims by life companies, and have favored the introduction of that clause in their policies, which rejects the claim of suicide, sane or insane."

[144] "The Logic of the Changed Attitude Towards Suicide," *Ibid.* (1900), vol. 48, p. 524.

[145] McCall, *opus cit.*, p. 52.

[146] Fouse, "Policy Contracts in Life Insurance," *opus cit.*, p. 40. Nineteen had a suicide clause for one year; twenty-five for two years; three for three years; and three had no restriction.

[147] *Best's Illustrations,* N. Y. (Sept. 1930). In case of self-destruction during the restricted period, forty-two return the premiums; five, the reserve; one, the premiums with interest; one, one-tenth of the face amount; and one considers the payments forfeited. It is interesting to note that in view of the increased frequency of suicide, induced by the late fall in stock prices, some companies have increased the period of limitation. Compare *ibid.* the Jan. and Sept. editions.

[148] (1914), 131 *Tenn.* 303, 314.

Modern policies usually provide, in substance, as follows: [149]

> Suicide.—In the event of self-destruction of the Insured, whether sane or insane, within one year after the date of issue of this Policy, the amount payable shall be limited to an amount equal to the premiums paid hereon.

Duelling, Violation of Law, and Execution.

In addition to the provision relating to suicide, policies formerly excluded, as a general rule, death resulting from duelling, violation of the law, or death at the hands of justice.[150] As in suicide, so also in these stipulations, there was a difference between English and American practice with respect to insurance on the lives of third persons.[151] At the present time these restrictions "have either been entirely removed or so modified as practically to amount to nothing." [152]

1. *Duelling.*

The law reports are singularly free of any decisions on this feature of the policy, Baker *v.* Supreme Lodge Knights of Pythias [153] apparently being the only one before the higher courts.[154] There seems to be no reason why the courts would fail to enforce such a provision.

2. *Violation of Law.*

If the policy provides an exception of death because of the violation of law, death must be the proximate result of a criminal act. Generally it does not include suicide, "or death in violation of a merely civil right." [155] It is necessary that death be a reasonable and legitimate consequence of violation of law.[156] Thus, the insurer is bound, "if the assured was killed after retreating from an altercation which he had commenced, under circumstances which would make the slayer guilty of felonious homicide."[157] In a case which was tried several times before both Massachusetts and New York courts, the insured "attempted to enforce the collection of a debt by taking property from his debtor's possession by force; and, the latter seizing him, was struck by, and thereupon shot and killed the insured."[158] The Massachusetts court held that the insured had not acted with criminal intent, and therefore the company was bound. The decision of the court was in part as follows:[159]

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[149] Appendix X.

[150] See, for example, the various policy forms set forth in the appendix.

[151] *Supra.* See also "On the Casualties to which Contracts of Life Assurance are Liable," *J. I. A.* (1860), vol. 8, p. 243.

[152] Fouse, L. G., "The Policy," in *The Business of Insurance,* H. P. Dunham, Ed., Ronald, N. Y. (1912), 3 vols., vol. 1, p. 307. In 1905, of 51 companies, 30 had no restrictions; 6 had them for one year; 12 for two years; 2 for three years, and one had a constant limitation. Fouse, "Policy Contracts in Life Insurance," *opus cit.,* p. 40.

[153] (1912), 103 *Miss.* 374, 387. Here it was held that a duel had none of the elements of sudden heat and passion, and the facts in the present case did not constitute a duel.

[154] Bliss, *opus cit.,* p. 366, § 222: "It has not, in its relations to life insurance, been the subject of any judicial decision."

[155] Vance, "Handbook," *opus cit.,* p. 812, § 230.

[156] 13 *L. R. A.* (N. S.) 258-264; *L. R. A.* 1917 C, 199.

To prevent payment, the insured "must have received the mortal wound during and while engaged in the commission of a crime, not merely in consequence of it afterwards."

> It must also appear that the death was caused or occasioned by or resulted from the criminal act. . . . it is not, however, essential that the deceased should have known, or have had reason to believe, that his criminal act would or might expose his life to danger. The fact that the crime actually did produce the death is sufficient to avoid the policy, without regard to the probability that such a result would ensue.

In the New York court,[160] a judgment for the company was reversed on the ground that "it was error in the court to refuse to allow the jury to pass upon the question, whether the death of the insured was caused by a known violation of law on his part, and whether the act of B, which produced the death, was a natural, reasonable, or legitimate consequence of the act of the insured."

In certain jurisdictions, the violation of the law by the insured will void the policy even in the absence of a policy stipulation, or in spite of the presence in the contract of an incontestable clause. The reason is that the enforcement of such contracts would contravene public policy. Thus, the Pennsylvania courts hold that where death results from the insured having voluntarily submitted herself to an illegal operation, known to her to be dangerous to life, with intent to cause an abortion, without any justifiable medical reason, this is a violation of a policy provision excluding death in violation of law.[161] Under substantially the same facts the Massachusetts courts have ruled that the policy is void on the ground of public policy, and the presence of a limitation in the contract is immaterial.[162] So also, contracts creating a general prohibition of marriage are void, although "conditions in partial restraint of marriage, in respect to time, place, or persons, if reasonable in themselves, not materially and practically creating an undue restraint upon the freedom of choice, nor operating *in terrorem* are valid." [163]

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[157] Harper's Adm'r *v.* The Phoenix Ins. Co. (1854), 19 *Mo.* 506, 512: "If A, upon a sudden quarrel, assaults B first, and upon B's returning the assault, A, really and *bona fide* flees, and being driven to the wall, turns again upon B and kills him, this is *se* defendendo.

"Now, if one dies under circumstances which would justify him in slaying his adversary, and when the person causing his death is, thereby, guilty of a felony, is it not a gross perversion of language to say; that that person died in the known violation of a law of the land?"

[158] Bradley *v.* Mut. Ben. Life Ins. Co. (1870), 3 Lans. (*N. Y.*) 341.

[159] Cluff *v.* Mut. Ben. Life Ins. Co. (1866), 13 Allen (*Mass.*) 308, 318, 319; and *ibid.* (1868), 99 *Mass.* 317.

[160] Bradley *v.* Mut. Ben. Life Ins. Co. (1871), 45 *N. Y.* 422, reversing *ibid.* (1870), 3 Lans. (*N. Y.*) 341.

3. *Execution.*

The courts are not uniform in their views on the effect of execution for crime upon the life contract. "Dying by the hands of justice" has been held to mean dying by the execution of the sentence of the law.[164] Fauntleroy's case raised the question for the first time.[165] In 1820, Fauntleroy assigned, without consideration, all his interest in a policy taken out in 1815. In 1824 he was convicted of a felony and executed. The court denied the assignees the right to recover, for the reasons stated by the Lord Chancellor: [166]

> "Suppose that in the policy itself this risk had ben insured against: that is, that the party insuring had agreed to pay a sum of money year by year, upon condition, that in the event of his committing a capital felony, and

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[161] Wells *v.* New Eng. Mut. Life Ins. Co. (1899), 191 *Pa.* 207. And the presence of an incontestable clause will not bind the company. McCreighton, Appel., *v.* American Catholic Union (1919), 71 *Pa.* Superior Ct. 332, cited with approval in Sipp, Aplnt., *v.* Phila. Life Ins. Co. (1928), 293 *Pa.* 292. Some courts, however, enforce the incontestable clause on the ground that where there is a conflict, the insured should be given the benefit of the doubt. Sun Life Ins. Co. *v.* Taylor (1900), 108 *Ky.* 408.

[162] Hatch *v.* Mutual Life Ins. Co. (1876), 120 *Mass.* 550.

[163] White *v.* Equitable Nuptial Benefit Union (1884), 76 *Ala.* 251. A policy of insurance against marriage is void. This case contains a discussion of the early decisions.

[164] Harper's Adm'r *v.* The Phoenix Ins. Co. (1854), 19 *Mo.* 506.

[165] The Amicable Society *v.* Bolland (1830), 4 Bli., N. S. (*Eng.*) 194. The policy contained no limitation.

[166] *Ibid.,* pp. 211, 212.

> being tried, convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy?" If such a policy, if available, could not be sustained, "Can we, in considering this policy, give to it the effect of that insertion, which if expressed in terms would have rendered the policy, as far as that condition went at least, altogether void?"

The first case in this country was that of Burt *v.* Union Central Life Insurance Company, before the United States Supreme Court.[167] The court adopted the English doctrine, and added that even in case of execution where the insured had been unjustly convicted, there could be no recovery. Mr. Justice Brewer delivered the opinion of the court:[168]

> Can there be a legal life insurance against the miscarriage of justice? Can contracts be based on the probability of judicial murder? If one policy so written be valid, the business of insuring against the fatal mistakes of juries and courts would be legitimate. . . . It is the policy of every State or organized society to uphold the dignity and integrity of its courts of justice. Such contracts would be speculations upon whether the courts would do justice. They would tend to encourage a want of confidence in the efficiency of the courts. . . . Such contracts would encourage litigation and bring reproach upon the State, its judiciary and executive, and would, we think, be against public policy and void.

The doctrine thus established has been criticized as "repugnant to the simplest principles of common justice, and even common sense,"[169] although it has been followed in Pennsylvania, in North Carolina, and, to some extent, in New York.[170]

Probably the better rule is that making execution one of the risks assumed by the insurer.[171] In 1905, the Pennsylvania courts followed the federal court in deciding the case of Collins *v.* Metropolitan Life Insurance Company.[172] But when the same case was transferred to the Illinois courts, they did not follow the previously held rule. In a reasoned decision, Mr. Justice Vickers concluded that "the execution of the assured for crime is no defense against an action upon a life insurance policy held by the person executed, in the absence of a stipulation exempting the company from liability for a death from this cause." [173] The following extracts indicate a shifting of emphasis from a strictly legalistic basis to one involving the economic significance of life insurance and a broader social outlook.

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[167] (1902), 187 *U. S.* 362.

[168] *Ibid.,* p. 368, quoting from the court of appeals. See also Northwestern Mut. Life Ins. Co. *v.* McCue (1912), 223 *U. S.* 234, 252.

[169] Vance, "Suicide as a Defense in Life Insurance," *opus cit.,* p. 404; Cabaniss, J. H., "Death by Legal Execution as a Risk Covered by the Ordinary Insurance Contract," *P. A. L. C., L. S.* (1926), vol. 19, pp. 81-104; *L. R. A.* 1918 A 898.

[170] In New York the company is liable only when the beneficiary has a vested interest. Smith *v.* Metropolitan Life Ins. Co. (1925), 211 *N. Y. S.* 755, 759.

[171] Davis, A. J., "Liability of a Life Insurance Company When the Insured Is Executed for a Crime," *P. A. L. I. C.* (1925), vol. 3, pp. 149, 163.

> It is said by the defendant in error that to permit a recovery of this policy would be contrary to the public policy of this State, as it would tend to remove a restraint thrown around persons who are tempted to commit crimes. The argument rests upon the same grounds that were urged centuries ago in support of the now obsolete doctrine of attainder and corruption of blood. . . . Without attempting historical accuracy, the law of England provided that all the property, real and personal, of one attainted should be forfeited and his blood so corrupted that nothing could pass by inheritance to, from or through him.
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> These ancient doctrines, whether resting upon grounds of public policy or upon the other reason which is sometimes put forth, that the government is entitled to the goods of the felon as compensation for the injury done and the expense occasioned, have failed to satisfy the conscience and judgment of courts of later periods in England and have never had a potential existence in American jurisprudence.
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> An insurance policy payable to the estate or personal representatives of the assured is a species of property. . . . Life insurance has become an important factor in the commercial and social life of our people. . . . Why should this enormous property interest be subject to any different conditions than those applying to any other property owned by the people? If a man who is executed for crime has at his death $1000 in real estate, $1000 in chattels and $1000 life insurance payable to his estate, his real estate descends to his heir and his personal chattels to his administrator, but the $1000 life insurance must be left in the hands of the company who has received the premiums because it is said to be contrary to public policy to require the company to

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[172] (1905), 27 *Pa.* Super. Ct. 353, holding that the presence of an incontestable clause is immaterial where a question of public policy is involved.

[173] Collins *v.* Metropolitan Life Ins. Co. (1907), 232 *Ill.* 37, 48. The presence of an incontestable clause did not enter into the court's reasoning. See also 3 *L. R. A.* (N. S.) 726, 727 b.

> pay, lest by so doing it lend encouragement to other policy holders to seek murder, and execution therefor, in order that their estates or heirs might profit thereby. This is defendant in error's position. This contention seems to border closely on the absurd.
>
> The decision in the Bolland case was based on the ground of public policy, and no doubt was in strict accordance with the established policy of Great Britain at that time.

The same viewpoint is taken in the case of Weeks *v.* New York Life Insurance Company.[174] After pointing out that the term public policy "imports something that is uncertain and fluctuating, varying, with the changing economic needs, social customs, and moral aspirations of a people," the court, by Mr. Justice Marion, continues:

> Over against the public good to be subserved by avoiding the policy contract, upon the somewhat tenuous theory that such forfeiture would tend to discourage the commission of capital crimes, is to be set the public good to be promoted by requiring payment of the insurance to the end that creditors be protected, commercial transactions safeguarded, and dependent women and children provided with the material necessities of life. Certainly, the interest of the State in saving the dependents of an executed criminal from becoming a charge upon public charity or from having to seek a livelihood under conditions of poverty and degradation, calculated to make them an economic liability or a social and civil menace, is sufficiently obvious.

And in Fields *v.* Metropolitan Life Insurance Company the reason for requiring payment on the part of the company was thus given by Mr. H. G. Morrison, Special Judge:[175]

> Is there any reason why one cause of the death of a father should deprive the widow and children of the benefit of his life insurance and all other causes of death, including drugs and vices, should permit them to benefit? The economic loss to them is the same, whether he dies of electrocution at the hands of the State or of vice or disease. There can be no basis in reason and in common sense to hold in reverence the ancient legal dogmas of other centuries. Life insurance has its strongest hold on the imagination because of its benevolent and self-sacrificing aspects. It enables dependents to survive

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[174] (1924), 128 *S. Car.* 223, 230 *et seq.* The court here gave consideration to the incontestable clause.

[175] (1922), 147 *Tenn.* 464, 475.

and maintain themselves and to withstand the economic shock of the loss of the head of the family and provider. It is fanciful to say that the cancellation of an insurance policy will restrain a man from crime. The law of the land, the machinery for its enforcement, and the restraints of conscience do this.

In view of our changing concepts of public policy there will probably be a tendency on the part of other state courts, when the problem arises, to follow the more liberal doctrine on this point, established by the courts in Illinois, and adopted by those in some of the other jurisdictions.[176]

Misstatement of Age.

When life insurance was first written the question of misstatement of age was relatively unimportant, since a uniform premium was charged at practically all ages.[177] But with the development of scientific life insurance, the question of age became important, and a misstatement invalidated the contract because of a provision to that effect (either in the declaration or the policy) or because of the doctrines of concealment, representations, and warranties.[178] Various methods have been used to adjust the difference arising from a misstatement.[179] American practice was for many years more severe than in England. In the seventies, for example, it apparently was still the custom in this country to forfeit the policy in case of misstatement.[180] It was in the late nineties before policy provision made appropriate adjustment,[181] although some companies had essentially the clause as it reads today.[182] Canada, in 1886, passed a law respecting the adjustments to be made in case of misstatement, but such legislation was not general in this country until subsequent to the Armstrong investigation.[183]

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[176] Davis, *opus cit.,* p. 163.

[177] Walford, "History," *opus cit.,* vol. 25, p. 434.

[178] Vance, *opus cit.,* p. 802.

[179] Richter, J. G., "Error in Age." *T. A. S. A.* (1893-94), vol. 3, p. 48. While there was no uniformity, one of three methods was available: "1st. The difference in premiums at age stated and the actual age, together with interest thereon, to be accounted for. 2d. Payment of such proportion of the amount insured as the premium paid bears to the premium proper at the actual age. 3d. A combination of the first and second methods, dependent mainly upon whether the adjustment is effected before or after death."

[180] Bliss, *opus cit.,* p. 371.

[181] Seay, *opus cit.,* p. 55.

[182] Fowler, *opus cit.,* p. 799.

The present policy provision governing this point is worded as follows:[184]

> Misstatement of age.—If the age of the Insured shall have been misstated, the amount payable by the Company shall be such as the premium paid would have purchased at the correct age.

This condition is enforced practically universally, but in Missouri such a provision is invalid, as being in violation of a state statute.[185] Nor is the clause inconsistent with one providing for incontestability.[186]

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[183] Can. Ins. Law (1886), as amended by 57 Vic. 1894, ch. 20. For details of such legislation, see the general discussion and citations, *supra,* ch. 3, p. 49, *et seq.,* especially note 67.

[184] Appendix X. Some companies issue an endorsement, admitting the age of the insured, upon submission at any time of proof of age. *Flitcraft Manual* (1929), p. 428.

[185] *Supra,* ch. 7, note 66.

[186] Sipp, Aplnt., *v.* Phila. Life Ins. Co. (1928), 293 *Pa.* 292, 297.

CHAPTER X

TERMINATION OF THE CONTRACT

Payment of Claims

Time of Payment.

After becoming operative, the life insurance contract continues in force, if its provisions are complied with, until it expires by limitation, by maturity at the end of a stated period, or by death.[1] The practice of deferring payment of death claims for some definite period of time seems to have had its inception in the earliest contracts written. The first policy of record provided for payment within "two monethes next after true intimacõn" of death had been given.[2] This custom was adopted by most of the mutual offices in England, although many of the early contracts, particularly those issued by private underwriters, contained no such stipulation.[3] Originally the Equitable Society paid claims six months after proof of death, but this was shortened in 1827 to three months,[4] the customary period at the time.[5] Some policies provided for a deduction, usually two per cent of the sum insured, upon the payment of claims, but this practice seems not to have been common, nor to have persisted any considerable length of time.[6]

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[1] *Supra,* ch. 4, p. 66. Thus, in a term insurance policy the liability of the company ends, in the absence of renewal or conversion, with the expiration of the period of time for which insurance was granted. In the case of an endowment policy, at maturity it is customary for the company to notify the insured, who then submits proof that he is still living. Riegel, R., and Loman, H. J., *Insurance Principles and Practices,* Prentice-Hall, N. Y., 2d ed. (1922), p. 25. Policies frequently *lapse* because of non-payment of premium, or they are *surrendered* for their cash value. *Infra.*

[2] *Supra,* p. 19.

[3] See, for example, Appendices I, II, III, V, VI, and VII.

[4] Walford, Cornelius, *The Insurance Cyclopaedia,* J. H. & C. M. Goodsell, N. Y. (1871), vol. 2, p. 632.

[5] Babbage, Charles, *A Comparative View of the various Institutions for the Assurance of Lives,* London (1826). Table facing p. 1. The Albion paid claims within 30 days.

[6] For an example of this provision, see Appendix III. The policies in Appendices I, II, V, VI, and VII contain no such stipulation.

In the United States claims were usually paid "sixty days after due notice and proof of death." [7] This custom was general until well after the Civil War,[8] although in 1865 the Universal Life introduced the practice of paying within thirty days.[9] With the rapid spread of insurance, competition among companies gradually established the practice of paying claims immediately.[10] At the present time this is the general custom, the company binding itself to pay the face of the policy upon receipt of due proof of the death of the insured.[11]

Proof of Death.

1. *In General.*

The regulations of the Equitable Society merely provided that "All claimants upon the Society must produce authentic certificates of the time and place of the death of the persons under whom they claim." [12] To protect themselves against fraudulent claims, the companies gradually required more detailed proof of death. Thus, about 1860, some policies provided that proof of death must include certificates by the attending physician, by a friend or acquaintance, and by the undertaker or sexton who attended the burial.[13] At the present time, a representative of the company usually assists in preparing the "Proofs of Death." [14] These consist of detailed statements by the claimant, the undertaker, an acquaintance, the physician, and the agent.[15]

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[7] Appendix IX. See also Appendices VIII and XV.

[8] Moir, Henry, "Liberality of Modern Policies," *T. A. S. A.* (1911), vol. 12, p. 176. Some companies deferred payment for 90 days.

[9] Knight, C. K., *"The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 144.

[10] Fouse, L. G., "Policy Contracts in Life Insurance," *Insurance,* Ann. Am. Acad. of Pol. & Soc. Sci., Phila. (1905), p. 41. In 1905, of 51 companies, 44 provided "for the payment of claims immediately after the receipt and approval of proofs of death." Seven specified 30 or 60 days after proof.

[11] Appendix X.

[12] Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J. I. A.* (1886-87), vol. 26, p. 9.

[13] "Proofs of Loss Required.

1st. A certificate of the Physician who attended the Insured at his last illness, stating particularly the nature of the disease, its duration, and the time he died; his apparent age, height, and general appearance.

2d. A certificate of a friend, or intimate acquaintance, stating the disease of which the Insured died, how long he was sick, and that he was present at the time of his death, or that he is knowing to the fact of his death.

3d. A certificate of the Undertaker or Sexton who attended the funeral of the Insured, and saw his remains interred, stating his apparent age, height, and general appearance.

These several certificates must be sworn or affirmed to before a magistrate, or some public officer empowered to administer an oath, and accompanied by a certificate of the authority of the officer administering the oath, with the seal attached, according to Act of Congress." Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Rev. Pub. & Print Co., Phila. (1888), pp. 710, 716.

2. *Disappearance.*

If the insured disappears for a period of seven years and his absence is unexplained, the presumption of death arises and the company is required to pay the claim.[16] The rule has been well stated in a Massachusetts case by Chief Justice Shaw.[17]

> It is a well settled rule of law, that upon a person's leaving his usual home and place of residence for temporary purposes of business or pleasure, and not being heard of, or known to be living, for the term of seven years, the presumption of life then ceases, and that of his death arises.

But where death is proved beyond a reasonable doubt, the claim becomes due and payable immediately.[18] Thus, in a California case,[19] a person wrote a letter to the captain of a vessel, stating he would commit suicide. No trace of him having been found when the ship reached port, he was held to be dead.

Where a party is absent seven years, the only presumption is that he is dead; there is none as to the time of death.[20] If it appears in evidence, however, "that the absent person, within the seven years, encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life, the court or jury may infer that life ceased before the expiration of the seven years." [21] In such cases it has been held that the liability of the insurer is limited to the face of the policy, plus interest from the date of *proof* of death.[22]

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[14] Riegel and Loman, *opus cit.*, p. 125.

[15] *Ibid.*, appendix pp. 383-387.

[16] Doe *v.* Jesson (1805), 6 East (*Eng.*), 80, 85.

[17] Loring, Adm'r. *v.* Steineman (1840), 1 Met. (*Mass.*), 204, 211. For a discussion of the fact and time of death, and cause of death in general, see Cooley, R. W., *Briefs on the Law of Insurance,* Vernon Law Book Co., Kan. City, 2d ed. (1928), 8 vols., vol. 6, pp. 5165-5182.

[18] Fidelity Mut. Life Ass'n. *v.* Mettler (1902), 185 *U. S.* 308. "The inference of death may arise from disappearance under circumstances inconsistent with a continuation of life."

[19] Rogers *v.* Manhattan Life Ins. Co. (1903), 138 *Cal.* 285.

[20] Davie *v.* Briggs (1878), 97 *U. S.* 628. But the presumption may be rebutted by counter-evidence. Loring, Adm'r. *v.* Steineman (1840), 1 Met. (*Mass.*) 204.

[21] Davie *v.* Briggs (1878), 97 *U. S.* 628, 634; Rogers *v.* Manhattan Life Ins. Co. (1903), 138 *Cal.* 285.

Where a claim has been paid and the insured reappears, the company has a legal right to collect the sum paid, with interest, especially where there is evidence of an attempt to defraud the insurer.[23]

Apparently, since the insured is presumed to exist until the end of the seven-year period, if premiums are not paid, the beneficiary is not entitled to the insurance, unless he can prove that death occurred before the due date of the next premium.[24]

Methods of Paying Claims.

1. *Optional Modes of Settlement.*

It was customary until quite recently to pay a life insurance claim in one sum. There were some exceptions to this rule, but the optional modes of settlement were not generally incorporated in the contract until after the Armstrong investigation. Their popularity among policyholders seems to have been established during the past decade. According to the experience of one company, which may be regarded as typical, the elections of optional settlements in 1919 were only about six per cent of what they were in 1927.[25] The options available at the present time may be classified into four fundamental types:[26]

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[22] Rogers *v.* Manhattan Life Ins. Co. (1903), 138 *Cal.* 285. Interest is not allowed from the date of death, since no right of action accrues until proof of death has been submitted. See *supra*, n. 11.

[23] Northwestern Mut. Life Ins. Co. *v.* Elliott (1880; Cir. Ct. D, Oregon). 5 *F.* 225. In a reasoned decision, a Scotch court has compelled the company to reinstate the policy upon payment of back premiums and interest, where the insured has acted in good faith. North British & Mercantile Ins. Co. *v.* Stewart (1871), 9 Session Cases (*Scotland*), 3d series 534. See also Wozencraft, F. W., "Right of an Insurance Company to Recover Benefits Paid in a Disappearance Case Upon the Reappearance of the Insured," *P. A. L. C., L. S.* (1929), vol. 22, pp. 99-121.

[24] Mutual Life Ins. Co. *v.* Louisville Trust (1925), 207 *Ky.* 654. But the policy may have remained in force because of the operation of one of its non-forfeiture provisions.

[25] Strong, W. M., "Optional Modes of Settlement," before the Eighth International Congress of Actuaries, London (1927), pub. in *Convention Year Book,* Life Insurance (1927), p. 363. "Twenty years ago, just as five score years ago, the policy proceeds were paid to the beneficiary for her to use, lose, or waste. . . . A few policies providing for special settlements, such as debenture, gold bond, and continuous instalment policies, were issues, but they were so few that they were negligible." *Ibid.,* p. 360.

[26] Appendix X.

(1) The proceeds of the policy may be left with the company for the lifetime of the beneficiary, or for a definite number of years. Interest is paid during the specified period, at the end of which time the principal sum is returned.

(2) The proceeds may be distributed in a fixed number of equal instalments, payable either annually or at shorter intervals.

(3) The proceeds may be distributed by the payment to the beneficiary of a life annuity with a certain number of payments guaranteed, usually for twenty years.

(4) The proceeds may be distributed in the form of a fixed income until such time as the principal plus interest thereon is exhausted.

Although these optional modes of settlement are no longer compulsory by state law, it is frequently provided that if they are included in the contract, the policy must contain a table showing the value of the monthly or annual instalments for each $1000 of proceeds under the above-stated second and third options.[27] The insured may select any of these options at the time of, or subsequent to, application for insurance upon securing the proper endorsement. Where the policy is payable in a lump sum, the beneficiary may also elect any of the options, but where the insured has limited the payment to one specific option, the beneficiary is unable to demand or receive its commuted value. Otherwise the purpose of the insured would be defeated.[28]

Where the face of the policy is small, the inclusion of any of the optional methods of settlement is of no value. A single payment is the only practical method. So, too, where the amount of insurance is large, some provision for lump sum payment should be made to take care of the expenses arising out of death. Among these may be mentioned the cost of the last illness, of burial, and the payment of various taxes. Then again the insured frequently has some definite purpose in mind which requires for its fulfillment the immediate payment of the entire proceeds.[29] Where, however, insurance is taken out for the protection of dependents, the payment of the proceeds in a single amount is likely to result in the loss of the money within a relatively short time. This was recognized by the Presbyterian Ministers' Fund, which provided in its plan of agreement with the annual contributors, "that no Annuity be transferable, or liable to be sold; in as much as that Practice would frustrate the very End of the Charter, and of the pious Contributions for this purpose." [30] The Pennsylvania Company permitted the sum insured to be made payable "in *annual portions* during the life of the person for whose benefit the insurance is made." [31]

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[27] Mass. Gen. L., ch. 175, § 132 (10); N. Y. Ins. L. § 101 (9). See also Appendix X. Optional methods of settlement were provided for in the New York Standard Policy, but upon its repeal, the inclusion of such options was no longer compulsory. N. Y. L. (1906), ch. 326, § 101; L. (1909), ch. 301, § 7, p. 562. See further Strong, *opus cit.*, pp. 362, 363. Although, as a result of the law, most companies included these options in their policies even in those states where they were not required, the public did not take advantage of them until a decade later.

[28] Appendix X.

In 1862 the Mutual Life introduced the survivorship annuity, erroneously believed by many to be a new form of insurance.[32] The following comment upon this policy, emphasizing the desirability of an income rather than a lump sum settlement, indicates that the financial dangers besetting the beneficiary were at that time clearly recognized.[33]

> Heretofore it has been usual for life companies to issue policies, making, for instance, the *amount insured* payable, on the death of the insured, to the surviving wife or children. To this species of insurance there are very serious objections. A man dies, having taken out a policy, say of ten thousand dollars, in favor of his wife. This money comes into her possession when she is without experience in money matters, and totally unacquainted with any way of investing her funds. The wisest know so well the hazards they incur in making investments that we can readily see how great would be the danger of a widow's losing all she might thus come into possession of. Her position, too, at such a time, is one in which she might easily be imposed upon by injudicious and designing persons, and be thus deprived of the benefits of the insurance. The plan now proposed avoids these and other similar difficulties, by enabling the insurer to secure a certain and definite provision in annual instalments, for the permanent support of a surviving nominee.

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[29] Beck, C. S., "Lump Sum Life Insurance," *Convention Year Book,* Life Insurance (1925), p. 182.

[30] Fowler, *opus cit.,* p. 614. Article III. Children might, however, be paid a "Sum in Hand" at the option of the corporation. Article XI, *ibid.,* p. 615.

[31] Morris, H. S., *A Sketch of the Pennsylvania Company for Insurances on Lives and Granting Annuities,* Lippincott, Phila. (1896), p. 97. See also Fowler, *opus cit.,* p. 727.

[32] Knight, *opus cit.,* p. 149. "This form of insurance was one of the earliest practiced in England as well as in this country, the Presbyterian and Episcopal Corporations having adopted it from the outset."

[33] *Hunt's Merchant's Magazine* (1862), vol. 46, pp. 489, 490.

Four years later the same company introduced a feature permitting the payment of the sum insured in a fixed number of instalments, such deferred payments to participate in the profits of the company.[34] With the growth of insurance, many new settlement features were introduced, but they seem to have been unsatisfactory and little used.[35] The continuous instalment, or life income, policy was devised in 1892 by Emory McClintock, Actuary of the Mutual Life. The idea occurred to him to combine a policy payable in a fixed number of instalments, with a survivorship annuity, a policy popular with "a few actuarially minded persons." [36] Such a combination removes the danger of the beneficiary outliving the period of payment, and it also makes provision for the support of minor dependents in case of the death of the beneficiary shortly after that of the insured. Further, it guarantees a definite income, a provision not possible under the continuous instalment option, where the amount of the payment depends upon the age of the beneficiary at the time of the insured's death.[37] When the law compelling standardization of contracts became effective in New York, the Superintendent of Insurance refused to approve continuous instalment policies for domestic companies. Until the Department changed its attitude, deferred survivorship annuities were issued as subsidiary contracts.[38] Subsequent to 1910, the generally recognized advantages of optional modes of settlement had forced their inclusion in the policies of a majority of the well-known companies.[39]

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[34] *Insurance Monitor* (1866), vol. 14, p. 263. "To meet the choice of such present or future members as may prefer to have the amount insured paid in instalments to their widows or heirs, rather than in one sum, this company is prepared to insert in its policies a clause agreeing that in lieu of the payment of the policy and profits in one sum, an equitable amount, to be determined by the Company, may be paid annually or semi-annually for any specified number of years, (say from five to twenty-five years) if desired.

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"This form of annuity will remove the anxiety which may exist in the minds of some policy holders lest the future provisions they have made for their families should be ineffectual or transitory in its duration, either through unsafe investments, unwise expenditure, or other uncertainties incidental to contingent trusts."

[35] Nollen, H. S., "Need for Greater Uniformity in Options of Settlement," *Convention Year Book,* Life Insurance (1923), p. 17. See also, Lunger, J. B., "Special Features, etc.," *Insurance,* A compilation of the Addresses delivered before the Twenty-Ninth session of the National Convention of Insurance Commissioners, Milwaukee, 1898. W. A. Fricke, Ed., p. 179. "For the last ten years the architects of life insurance have been exhibiting this national characteristic in the development of special features in policy contracts. To such an extent has this tendency been carried that the good old-fashioned forms of life and endowment policies appear to be struggling for an existence amidst a mass of consols, debentures, bonds and income policies." See further, *supra,* n. 25.

[36] McClintock, Emory, in a discussion of the continuous instalment plan. *T.A.S.A.* (1901-03), vol. 7, pp. 374, 375. Where the number of fixed, annual instalments is twenty, the payment of the survivorship annuity is deferred for that length of time. Under the ordinary survivorship annuity, the payments begin immediately upon the death of the insured, and continue only during the lifetime of the original beneficiary.

2. *Insurance Trusts.*

With the growth in popularity of the various settlement options, life companies have been called upon to draw up complicated special agreements, looking to the administration of the proceeds far into the future, and subject to a variety of contingencies.[40] Even before the beginning of the present century, it seems to have been the practice of at least one prominent company to attach to its policy an agreement defining the insured's wishes as to the disposition of the proceeds.[41] While an insurance company may well administer settlements, "simple in character and of not too long duration as an incidence of its general business, this will not be possible in the case of involved settlements in the nature of trusts." [42] As stated by one authority, there are many trusts that a life insurance company should not be called upon to perform.[43]

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[37] Appendix X, table of values.

[38] Sheppard, H. N., "Survivorship and Deferred Survivorship Annuities," *T. A. S. A.* (1912), vol. 13, p. 8.

[39] Markham, G. C., "Settlement of Losses," *The Business of Insurance,* H. P. Dunham, Ed., Ronald, N. Y. (1912), 3 vols., vol. 1, p. 327. At this time, of 26 well-known companies, all offered the option of fixed instalments, varying from two to fifty years; 24 offered the continuous instalment feature; and 17 permitted the proceeds to be left with the company at a guaranteed rate of 3 or 3½ per cent interest, with the right to participation in surplus earnings. For an analysis of the more recent practices of 185 companies, see Hunter, Arthur, "Trust Agreements in Connection with Life Insurance Policies," *T. A. S. A.* (1928), vol. 29, p. 233. The practice does not seem to be at all general in Great Britain. Rhodes, E. E., discussion of Henry Moir's article, "Divergent Developments of Life Insurance in Britain and America," *ibid.,* p. 277. For a comprehensive analysis of the advantages of income over lump sum settlements, see Ramsay, A. G., "The Development of Monthly Income Insurance," *J. C. I. I.* (1916), vol. 19, pp. 89-103.

[40] For a copy of a specimen trust agreement, where the insurance company acts as trustee, see Hunter, *opus cit.,* p. 244.

[41] Lunger, *opus cit.,* p. 182.

[42] Cox, G. W., "Option Settlements and Trusts," *Convention Year Book,* Life Insurance (1925), p. 209.

> For instance, it would not want to obligate itself to see that the income from the proceeds of one of its policies was expended by the beneficiary in a certain way, nor would it undertake to expend for the beneficiary, or in his behalf such income, or to see to or be responsible for the application of the fund after it is paid over. Such an undertaking would lead it into fields too remote from that for which it was organized and into those in which another class of corporations is better fitted to operate.

Complicated settlements are not justified "because they involve an unreasonable expense in the drawing of the contract with the probability, perhaps, of even greater expense in administering settlement in accordance with the contract." [44] In 1916, a special committee of the Association of Life Insurance Counsel recommended certain limits beyond which optional modes of settlement should not be carried. Payment of the principal should not be postponed beyond the duration of two lives in being at the time of the death of the insured, nor should the contingency of marriage be considered in determining the payees.[45] Where it is deemed desirable to incorporate stipulations, "designed to tie up funds for a long term of years and providing for the inevitable contingencies of marriages, birth and death, and often most properly requiring discretionary powers," a life insurance trust is much more advantageous to all parties.[46] Under this plan a local trust company is appointed to receive the policy proceeds, which are then administered in accordance with the provisions of a deed of trust. Although not a recent development, the life insurance trust has become popular within the past decade.[47]

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[43] Dickenson, R. C., "Trusts Under Life Policies," *P. A. L. I. C.* (1913-1921), Paper 12, p. 3.

[44] "Report of the Special Committee of the Association of Life Insurance Counsel on 'Modes of Settlement under Policy Provisions,' Dec., 1916," *P. A. L. I. C.* (1913-21), Paper 15, p. 27. See also Cox, *opus cit.,* pp. 208, 209.

[45] For the recommendations in detail, see *ibid.,* pp. 30-32.

[46] Cox, *opus cit.,* pp. 208, 211. "There is much to be gained by returning the matured insurance fund to local trustees when it is to be held only for interest distribution with payment of parts of the principal from time to time."

[47] Scully, C. A., *Insurance Trusts,* N. Y. (1927), p. 10. "As a matter of fact, the unfunded form of insurance trust has been in use by a few institutions for many years, one trust company having been named as trustee of policies of life insurance in 1877, but neither the funded or unfunded form of insurance trust received general recognition or widespread attention until after 1920." See also Reynolds, J. A., "Policy Settlement Agreements,"

It seems to be generally recognized that where a life insurance company holds the insurance proceeds for distribution in accordance with the terms of some settlement agreement, the relationship established is one of contract, rather than one of trust.[48] The advantages to the insured of such a relationship have been set forth as follows: [49]

> The insured, usually the husband or father, desires to create a fund which will absolutely guarantee to his wife and children or dependents a permanent, fixed, unvarying, constant, and determined income, payable to them at regular intervals, independent of and regardless of the fluctuations of business, of the rise and fall of securities, or the inherent weakness of individual securities. This desire of the insured is the *sine qua non* of any arrangement which he may contemplate, and such desire cannot be accomplished by the creation of what is strictly a legal trust.

P.A.L.C. (1926), vol. 21, pp. 56-70; McAllister, F. W., "Policy Settlement Agreements," *ibid.,* pp. 71-81; Voorhees, C. H., "Some Legal Problems Involved in the Life Insurance Trust," *P.A.L.C.,L.S.* (1928), vol. 21, pp. 122-140; Vance, W. R., *Handbook of the Law of Insurance,* West Pub. Co., St. Paul, 2d ed. (1930), pp. 608-610.

[48] "Report of Special Committee," *opus cit.,* pp. 3, 4. "In treating the subject, it seems necessary to make a distinction between what are *legally* trust provisions and trust instruments, and provisions under policy contracts which are *legally* nothing more or less than provisions of the contract. Notwithstanding the opinion held by some to the contrary, your committee, after mature consideration of the matter, feels that it can with confidence state its opinion that the various provisions commonly inserted in policy contracts under which the insurance company agrees to hold the proceeds during a definite period or during a lifetime, meanwhile paying the interest thereon, or, provisions under which the insurance company agrees to pay the proceeds in a definite number of instalments, periodically, or provisions for the payment of a definite number of instalments certain with additional instalments payable during the lifetime, are in no respect trust provisions, but that, on the contrary, they are merely matters of contractual obligations and that the insurance company, instead of acting as a trustee with trust obligations, is simply carrying out the provisions of its contract the same as a debtor carries out a contract with his creditor; or in other words, is simply paying the proceeds of the policy in accordance with his terms."

[49] Ramsay, *opus cit.,* p. 99. Further, p. 101: "Notwithstanding the professions, powers, and representations of Companies as to their character, we look in vain for those ear marks by which can be clearly deciphered the trust relation. We look in vain for the specific holding of securities for specific beneficiaries, the accounting to such beneficiaries of the entire income earned from such securities, less legal charges, for the payment of the increased value which the specific security may have attained, or the lessened value which a falling market may occasion." For a more detailed discussion of this point, see Dickenson, *opus cit.,* pp. 9, 10; Perrin, O. W., "On Modes of Settlement Under Policy Provisions," *T.A.S.A.* (1917), vol. 18, pp. 70, 71, 383-393; the discussion of Arthur Hunter's article, "Trust Agreements in Connection with Life Insurance Policies," *ibid.* (1929), vol. 30, pp. 200-232; Davis, Samuel, "Spendthrift Trusts in Life Insurance Policies," *P.A.L.I.C.* (1922-24), vol. 2, pp. 321-331.

In a gradually growing number of states, legislation has been enacted for the protection of beneficiaries where the proceeds are retained by the company.[50] Massachusetts, for example, has provided as follows: [51]

> If, under the terms of any annuity contract or policy of life insurance, or under any written agreement supplemental thereto, issued by any domestic life company, the proceeds are retained by such company at maturity or otherwise, no person entitled to any part of such proceeds, or any instalment of interest due or to become due thereon, shall be permitted to commute, anticipate, encumber, alienate or assign the same, or any part thereof, if such permission is expressly withheld by the terms of such contract, policy or supplemental agreement; and if such contract, policy or supplemental agreement so provides, no payments of interest or of principal shall be in any way subject to such person's debts, contracts or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof. No such company shall be required to segregate such funds but may hold them as a part of its general corporate funds.

Surrender Values

Development.

In the absence of legislation or of a provision in the policy to the contrary, the failure to pay premiums due under a life insurance contract will render the policy void, and all values thereunder are forfeited to the company.[52] The inequity of such a practice was early recognized, and many companies made some provision in their regulations for the payment of some value upon surrender.[53] Thus, in 1770, the Equitable Society ordered "that the court of directors be enabled to accept the surrender of a policy at the request of the party interested, whenever they shall see just cause." [54] Two years later the court was empowered to accept the surrender of a policy, *"and to purchase the same upon such terms as shall seem to them reasonable and equitable."* [55] The reasons for such action were set forth in a prospectus of the Society, issued in 1791.[56] Surrender values, however, were not immediately available.[57]

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[50] Nollen, *opus cit.*, p. 26.

[51] Mass. L. (1921), ch. 168. Similar legislation had been enacted in New York in 1911. N. Y. L. (1911), ch. 327, amending section 15 of the personal property law.

[52] Armstrong *v.* Equitable Life Assur. Soc. (1913), 14 *Ga.* App. 353; Haskell *v.* Equitable Life Assur. Soc. (1902), 181 *Mass.* 341. See also *supra*, pp. 171, 179.

[53] The inequity arises because under a level premium plan of payment, a reserve is created out of the excess of the premium over the amount required to pay claims. For a discussion of the reserve, see Huebner, S. S., *Life Insurance*, Appleton, N. Y. (1928), ch. 16.

[54] Walford, "Cyclopaedia," *opus cit.*, p. 639. This was to allow members to escape from the liability of contribution.

In the United States, surrender values in paid-up annuities had been allowed by the Presbyterian Ministers' Fund as early as 1792, and in 1852 provision was made by the company for paid-up and cash surrender values in insurance.[58] The Rules of the Pennsylvania Company contained a provision for the purchase of surrendered policies "at a fair price." [59] Other companies also conceded the insured some sort of value in case of surrender, the following comment, written in 1843, indicating the method used: [60]

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[55] *Ibid.,* p. 640.

[56] *Ibid.* "Every member of the Society assured for the whole continuance of life has a rateable interest in the claim which will become due at his death: and this interest increases yearly, till at the extremity of life it amounts to the sum assured; and in case of the more immediate purpose of an insurance shall have ceased, and the owner of the policy should be minded to dispose of the same, rather than to keep it on foot; or if, through unforeseen misfortunes, any person assured by the Society shall himself stand in need of that assistance which was intended for a surviving family, the Society will upon application become the purchasers of such an interest at a fair price." Surrender values of £72,600 had been paid out up to the year 1809. In 1821, a member was allowed to surrender any portion of his policy, or bonus added thereto.

[57] *Ibid.,* p. 634. In June, 1795, it was resolved, "that no order shall be made for returning money on a forfeited policy at the same general court at which the petition for such return shall be presented; nor shall any order made in that behalf be considered as valid and effectual until it shall have been approved at two successive general courts." See also Babbage, *opus cit.,* pp. 143, 144.

[58] Dawson, M. M., *Elements of Life Insurance,* Spectator, N. Y., 2d ed. (1902), p. 110; Allen, P. S., "The Story of the Birth of Life Insurance in America," *Insurance Monitor* (1898), vol. 46, p. 378.

[59] Appendix XV.

[60] Jencks, T. R., "Life Insurance in the United States," *Hunt's Merchants' Magazine* (1843), vol. 8, p. 239. "Or one can surrender it to the company for an equivalent calculated upon known, fixed, and equitable principles, depending upon the time for which it was insured, the probability of the policy's falling in, and the amount of premium already paid; . . ." *Ibid.,* p. 124.

The Mutual Life permitted from the beginning the surrender of policies for cash after two premiums had been paid. *Historical Sketch of The Mutual Life Insurance Company of New York* (June, 1927), pp. 24, 25. See also, *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia* (1922), p. 25; *National Life Insurance Company,* A History of Its Foundation and Development, Montpelier (1925), p. 32; Fowler, *opus cit.,* pp. 660, 708, 723, 726.

> The office fairly calculates what is the value of the risk it has run, and gives back to the insured all he has paid over this sum, which went to make up the consideration for the risk to be run in future.

Where a part of the premium was accepted in the form of a note, surrender value of a kind also existed, since the companies rarely attempted to collect unpaid notes in case of lapse.[61]

The question of including in the policy some provision whereby the insured was entitled to surrender value as a right, rather than as a gratuity on the part of the company, was discussed at the second meeting of the Life Underwriters' Convention, held in 1860.[62] In this year, too, appeared the first provision in a life contract, definitely stipulating that after two premiums had been paid, the policy, at the option of the insured, might be considered paid-up for a fractional part of its original amount.[63] The next year, through the untiring efforts of Elizur Wright, senior Insurance Commissioner of Massachusetts, that state passed the first non-forfeiture act, providing for extended term insurance.[64] In discussing the question, Mr. Wright, in his Fourth Report, wrote as follows:[65]

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[61] *Supra,* p. 182, *et seq.*

[62] Hudnut, J. M., *Semi-Centennial History of the New-York Life Insurance Company,* N. Y. (1895), p. 58. "The discussion in the Convention elicited the fact that every life company in the United States, save one, paid surrender values for policies, either in cash or paid-up insurance, after about the fifth year, provided they were surrendered before lapse, and in some cases after lapse, but there was no common rule or practice, and none of the companies agreed in the policy to pay such values." *Ibid.,* p. 60.

[63] *Ibid.,* p. 62. The policy was a ten payment life policy, issued by the New York Life.

[64] Mass. L. (1861), ch. 168. The act provided in part: "The net value of the policy, when the premium becomes due and is not paid, shall be ascertained according to the 'Combined Experience,' or 'Actuaries' rate of mortality, with interest at four per centum per annum. After deducting from such net value any indebtedness to the company or notes held by the company against the insured, which notes, if given for premium, shall then be cancelled, four-fifths of what remains shall be considered as a net single premium of temporary insurance, and the term for which it will insure shall be determined according to the age of the party at the time of the lapse of premium, and the assumptions of mortality and interest aforesaid." Section 2 further provided "that the company shall have the right to deduct from the amount insured in the policy the amount at six per cent. per annum of the premiums that had been forborne at the time of the death." This provision was later eliminated.

[65] Quoted in *Mass. Ins. Rep.* (1876), vol. 21, pt. 2, p. 226.

> The absurdity of having the forfeiture of an annual premium insurance work the forfeiture of one on which the premium has all been paid down, is too flagrant to need dwelling on. . . . The excuse offered for this palpable injustice, is, that every insuree is made aware, before taking his policy, that such is the condition of forfeiture, both of it and of all the additions that may be made to it. If a person in such circumstances, commencing a life-long experiment, does not misunderstand the conditions of the policy, he may misunderstand his own strength, and may be very unwise in piling up penalties to be visited years hence on his want of punctuality. Why should the Company invite him to do it?

And further, in his Fifth Report, he stated:[66]

> Very large corporations may take narrow views of their own interests, and we think the Companies which oppose this legislation mistake their true policy, which is to have their business freed from all bugbears and relics of barbarism, all unfair gambling, and made incapable of giving any customer a value less than that for which he pays.

The discussion, precipitated by the passage of the Massachusetts Act, continued many years. The New York Superintendent recognized that the "evils resulting from lapsed policies should, if possible, be in some manner ameliorated,"[67] but preferred to rely upon competition to bring about liberality.[68] Some writers believed that it was dangerous to promise definite values, for the following reason:[69]

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[66] *Ibid.*, p. 227. For a discussion of the origin of the non-forfeiture system see an article by Pliny Freeman, *Insurance Monitor* (1868), vol. 16, p. 43. For a discussion of the defects of the Mass. Law, see an article by D. P. Fackler, *ibid.* (1869), vol. 17, p. 973. See further "Two Views Concerning Surrender Value," by Emory McClintock and Charles Cochran. *Ibid.*, (1875), vol. 23, p. 827.

[67] *N. Y. Ins. Rep.* (1864), vol. 5, p. lxxi; *ibid.* (1862), vol. 3, p. xxxvi.

[68] *Ibid* (1869), vol. 10, pt. 2, p. cxvii.

[69] *Insurance Monitor* (1879), vol. 27, p. 179. For a comprehensive analysis of the question, see Crisford, G. S., "The Values that should be allowed by a Life Office for the Surrender of its Policies, considered under their various aspects, as affecting the Interests of the Office and of the Policy-holder," *J. I. A.* (1879), vol. 21, pp. 301-380. In commenting on the article, Mr. Cornelius Walford remarked: "I think that the surrender value has grown out of a very mistaken idea. It has gone on growing until it has come to be regarded as a right. Now, there is no right about it. What other contract is there, which, entered into under seal between two parties, can be broken by one of them, and respecting which the person who has altered his mind can coerce the other into giving him something to his advantage?" *Ibid.*, p. 376.

> The reserves, technically so called, are not, as is frequently asserted, the individual property of the policy-holders. They represent their relative interests in a fund contributed from all the policies, and they cannot be withdrawn without disturbing the equities of all the members. . . . The mathematical value of a benefit is not its true value, and the actual value must take into account the actual condition of business at the instant when a determination is required. It is just as impossible to provide in advance by statute what the surrender value should be, as it would be to provide in advance the exact amount which might be drawn out by a person going out of copartnership.

Granting that there is some measure of truth in the above statement, nevertheless the legislature can stipulate a minimum surrender value, without great danger to the remaining policyholders.[70] In an address before the Institute of Actuaries, President Sprague thus formulated his reasons for accepting the principle of non-forfeiture: [71]

> If we consider how the surrender-value of a policy arises, it must, I think, be admitted that failure to pay the premium, ought not to involve the forfeiture of the surrender-value. The assured pays every year to the office a sum larger than is required to meet the current risk and provide for expenses; and these overpayments are accumulated by the office, in order to provide for the time when the sums paid by the assured will be insufficient to meet the current risk. The overpayments are thus virtually sums entrusted to the office, in order to be accumulated by it for the benefit of the assured; and the accumulation of them gives rise to the reserve held by the office in respect of the policy. That reserve is in no sense the property of the assured, but his rights in it are recognized by the almost universal allowance of a portion of it as a surrender-value of the policy. There is nothing in these circumstances that can justify the practice of making the right to a surrender-value contingent upon its being claimed while the policy is still in force; and I think

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[70] That the gains from forfeitures were considerable, and represented a real profit to the companies before they granted substantial surrender values is indicated in the testimony of Emory McClintock before the Armstrong Committee. "Prior to the 60's and to some extent during the 60's the companies treated every policy on which the premiums were not paid as entirely forfeited, and I may mention here, for illustration, that the actuary of the Mutual Life stated in print in 1863 that the entire expense of the company during the five years preceding 1863 in which the distribution of surplus was made to policyholders—the entire expenses during those five years were more than paid from what he called miscellaneous sources, which represented the reserves on lapsed policies—a policy lapsed, and that was the end of it and the entire reserve was cancelled." *Testimony Taken before the Joint Committee of the Senate and Assembly, etc.,* Albany (1905), 10 vols., vol. 3, pp. 2235, 2236.

[71] Sprague, T. B., "Some Remarks on the Application of the Principle of Non-Forfeiture to Ordinary Policies," *J. I. A.* (1884), vol. 24, pp. 364, 365.

> it not impossible that, if the question were raised in the Law Courts, it might be decided in favor of the assured. I am therefore of the opinion that the offices will act wisely if they do not wait until the question is forced upon them, by the pressure of public opinion or by a decision of the Law Courts; but at once admit and consistently act on the principle, that the surrender-value belongs to the assured, altho the policy itself may have become void by non-payment of the premium or otherwise. If this principle is admitted, it becomes a matter of detail whether the value is to be paid in cash, or to be applied as a single premium to keep the policy in force permanently for a reduced amount, or temporarily for its full amount.

Following the lead of Massachusetts, various states passed non-forfeiture laws,[72] New York enacting such legislation in 1879.[73] The following year Massachusetts spread upon the statute books the first law requiring the payment of the surrender value in cash.[74] At that time the practice of granting cash values rarely existed,[75] and its wisdom was questioned. As stated by one official, "surrenders for cash interfere, and may conceivably very seriously interfere, with that employment of the funds of the membership which is of the essence of financial stability and a most important factor in the reduction of current cost to continuing members." [76] During the next two dec-

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[72] California and Michigan in 1869, Maine in 1877, and Missouri in 1879. Willey, Nathan, *The Principles and Practice of Life Insurance,* Spectator, N. Y., 6th ed. (1892), p. 34.

[73] N. Y. L. (1879), ch. 347, p. 427. It provided for paid-up or extended term insurance.

[74] Mass. L. (1880), ch. 232, p. 182.

[75] Lunger, J. B., "The Influence of Competitive Concessions on Legislation in Life Insurance," *P. A. L. I. P.* (1914), vol. 8, p. 79.

[76] Greene, J. L., "Special Features, Dividends, Surrender Values, Et Caetera," Insurance, Fricke, *opus cit.,* pp. 168, 169.

"The scheme of life insurance proposes that its invested reserves shall be drawn upon only according to the foreknown and measurable operation of the law of mortality. The right of members to withdraw at any time, taking their contributions to reserve in cash; negatives the whole scheme, exposes the fund to be drawn upon at will, the draft upon it being, both in time and amount, dependent upon elements of motive which are unforeseen and incalculable, and of whose future operation nothing is known except that they exist, that they may be brought into great and most critical intensity of operation at any time by a variety of causes, and that they are uncontrollable by the company and have absolutely free play against it. There is no defense against them except the blind hope that they may never operate.

"The right of free surrenders for cash inverts the theory and the only consistent, logical, and safe practice in life insurance, by making the reserve consist in effect of a mere group of individual deposits, subject to check at least once a year, and this feature of uncertain and precarious continuance ades, however, competition among the companies gradually made it necessary for most of them to guarantee some form of surrender value, so that in 1905, of fifty-one representative companies, all had some non-forfeiture provision after two or three years, either "by way of loan, or paid-up or extended insurance." [77]

Notwithstanding the fact that surrender values were generally granted, tables indicating the amounts thereof were not at first incorporated in the policies, although at least one English company had followed that practice as early as 1826.[78] In this country the desirability of such tables was voiced in 1867,[79] but with the exception of the Brooklyn Life, which inserted such tables of cash values in 1869, "no company seems to have inserted tables of guarantees in its policies until the middle 'nineties.' " [80] As a result of the legislation passed by the various states subsequent to the Armstrong Investigation, companies were required to grant surrender values, and print in their policies tables of values showing the extent of the cash value, and of the paid-up or extended insurance in case of lapse during a stipulated number of years.[81]

Present Practice.

At the present time the insured is usually entitled to one of three options upon surrender of his policy.[82]

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of the insurance factor and of the right of withdrawal of invested funds, becomes at once the dominant feature of the company's affairs and is the ultimate contingency to be kept always in view in every matter. The company, in effect, is no longer a life insurance company, treating all its affairs on a true life insurance basis, with withdrawal as a mere incident, subordinate in every respect to the integrity of its insurance operations, but a pseudo bank of deposit, liable to have all its funds withdrawn in any year, needing therefore to have its investments immediately convertible into cash without loss, while yet upon these funds are founded the presumably lifelong contracts for whose prosperous administration an entirely different theory of investment is essential and for the management of which a bank is utterly unfit." *Ibid.*, pp. 171-173. See also pp. 327, 328.

[77] Fouse, *opus cit.*, p. 41. Four provided cash surrender values after two years; 29, after three years; 6, after five years; 8, at periods specified in the contract; and 4 had no cash surrender values.

[78] Babbage, *opus cit.*, p. 144.

[79] *Insurance Monitor* (1867), vol. 15, p. 103.

[80] Hutcheson, W. A., "Some Facts in the Development of Life Insurance in the United States," *P. A. L. I. P.* (1920), vol. 14, p. 68.

[81] For details of such legislation, see the general discussion and citations, *supra*, ch. 3, p. 49, *et seq.*, especially note 67.

[82] Appendix X. Tables showing the values for a number of years are included in the policy.

(1) The policy may be surrendered for the net cash value as provided therein.

(2) The policy may be continued as term insurance for its full amount, for as long a period as the net cash value will purchase, if used as a net single premium, at a rate based upon the standard adopted by the company. According to the New York law,[83] this option is automatic where the insured has indicated no preference or the policy does not stipulate otherwise. The amount of any dividend additions is added to the face of the policy and the cash value available for the purchase of term insurance is increased by the cash value of such additions. Where the insured has borrowed on his policy, both the amount of term insurance and the cash value used as a net single premium are reduced by the amount of the loan.[84] In the case of endowment policies, where the sum available will extend the policy beyond the term of the original contract, "the excess shall be used to purchase in the same manner pure endowment insurance payable at the end of the endowment term named in the policy on the conditions on which the original policy was issued." [85]

(3) The policy may be surrendered for paid-up insurance, payable at the same time and upon the same conditions as the original policy, "the amount of such paid-up insurance being such as the net cash value applied as a net single premium will purchase," based upon the standard adopted by the company.

Another option which is becoming general is the right of the insured to specify that the cash value shall be used automatically, until exhausted, as a loan to pay premiums.[86]

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[83] N. Y. Ins. Law, § 88.

[84] Maclean, J. B., *Life Insurance,* McGraw-Hill, N. Y. (1929), p. 156. As stated by one writer, in the absence of such a provision, it "would enable one who was thoroughly conversant with the terms of his policy on becoming sick unto death to borrow, for example, $5000 on a $10,000 policy, leaving enough equity to continue the insurance until after his decease, so that the company would be obliged to pay a total of $15,000 under the contract." Cole, R. H., "Non-Forfeiture Provisions of Modern Life Insurance Contracts," *Report of the Insurance Institute of Hartford, Inc.* (July, 1914), vol. 7, p. 72.

[85] N. Y. Ins. Law, § 88.

[86] *Supra,* p. 178. For a discussion of the advantages and disadvantages of this method compared with that of extended term insurance, see Maclean, *opus cit.* (1924), pp. 133-136.

The Surrender Charge.

The amount available for cash and other surrender values depends upon the reserve which has been accumulated on the policy. In case of early surrender, however, the reserve is reduced by a surrender charge, the purpose of which is to reimburse the company for the expense incident to obtaining the insurance. Since the initial expenses are high, the return of the full reserve in the early years would be at the expense of the continuing policyholders. Another reason sometimes advanced for the need of a surrender charge is that the mortality rate of the continuing members is likely to be higher than the rate for the entire group, since presumably only the healthy policyholders will surrender their policies. The effect of this "adverse selection," however, is largely a matter of speculation.[87]

The amount of the reserve which may be withheld has been regulated in many of the states. The company is not required to grant any surrender value before the end of three years, and the method of determining the charge which may be made thereafter varies among the states. In New York, for example, the company may deduct as a surrender charge either two and one-half per cent of the amount of insurance, or twenty per cent of the reserve.[88] Massachusetts provides for a surrender charge of not more than "five per cent of the present value of the future net premiums." [89] Louisiana stipulates a charge of one-fifth of the reserve,[90] a method which is inequitable.[91] The various charges fixed by statute are merely maximum charges; the companies are more liberal in the granting of surrender values than required by law, and competition will probably bring about greater liberalization in the future.[92]

While there is no longer any question concerning the granting of a surrender value, still, in the opinion of some authorities, a company may be too liberal in its attitude toward the lapsing policyholder. The reasons supporting such a conclusion have been thus stated:[93]

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[87] Huebner, *opus cit.,* pp. 246-249; Maclean, *opus cit.,* pp. 128-131.

[88] N. Y. Ins. L., § 88. This is the common provision. *Supra,* note 81.

[89] Mass. Gen. L., ch. 175, § 144.

[90] La. L. (1906), Act 193, Sect. 2.

[91] Where the maximum charge is 20 per cent of the reserve, it does not permit the company to make a sufficient deduction in the first years. "This is inequitable and wrong in principle as it results in a deduction which increases with the age of the policy and does not admit of a sufficient charge in the earlier years on low-priced policies." Cole, *opus cit.,* p. 70.

[92] Maclean, *opus cit.,* p. 130.

> The practice of paying a cash surrender value in the second year instead of waiting until the third premium has been received, has made its appearance and seems to be growing in favor. This feature is one to be commended as being in the direction of sensible liberality so long as a proper surrender charge is deducted. But one or two companies even pay surrender values at the end of the first year, making a very small deduction from the reserve of the policy—a deduction which in most instances is insufficient to pay the initial expense of securing the business.
>
> The values now guaranteed seem to be on a basis which ignores the possibility of a company being subject to unforeseen reverses, as well as the principle which the older school of actuaries so strongly upheld, namely—that reserve values do not belong to individual policyholders but are correct only on the average.
>
> The first duty of company officials is to conserve the interests of the active, living, and continuing policyholders. They are even of more importance than the new applicants; they are of far more consequence than those who wish to surrender, and when any company for advertising advantages, offers inducements to new applicants which may enable them to retire with as much advantage to themselves as if they stayed, then the company is surely adopting a dangerous practice.

At the present time the custom is to grant surrender values after three premiums have been paid, although many companies allow such values after two premiums.[94] The majority of companies provide for a decreasing surrender charge, which is entirely removed at the end of five, ten, fifteen, or twenty years, although a few companies have no charge after two years.[95] The contracts of the majority of the companies also contain provisions for the deferment of cash surrender values, usually for a period of ninety days, although many policies do not give the company such right unless required by state law.[96] Participation is frequently allowed in extended and paid-up insurance, and some companies grant cash values on the former, and both cash and loan values on the latter.[97]

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[93] Moir, *opus cit.*, pp. 183-185.

[94] Of fifty leading companies, 24 grant values after 3 premiums; 21, after 2 premiums; 4, after 2 or 3 premiums, depending upon the type of policy; and one company, after 1 premium, when the reserve exceeds $10 per $1000. *Best's Illustrations,* N. Y. (Sept., 1930).

[95] Of fifty leading companies, 4 retain a charge for 20 years; 4 for 15 years; 15 for nine or ten years; one for 7 years; and the remaining companies, for 5 years or less, a few having no charge. *Ibid.*

Policy Loans

The granting of loans upon the security of the policy was a somewhat later development than the allowance of cash value upon surrender. In 1825, the actuary of the Equitable Society thus stated the objections to such practice: [98]

> The . . . proposition for lending money on policies and their additions, besides creating a great multiplicity of complicated accounts, would be in danger of involving the Society in numerous litigations, arising from forfeitures incurred by the non-payment of the interest and annual premiums; from the difficulty of ascertaining the trusts for which the policies are a security; from the policy and additions belonging to two different parties; and from other circumstances which the ingenuity of the law might probably discover to render this loan far from being a benefit either to the borrower or the Society.

Several of the societies, however, granted policy loans during this period, generally to the extent of two-thirds of the value of the policy.[99] In this country some companies allowed policy loans before the middle of the last century, but apparently they were not common, and in some cases the practice was discontinued.[100] Where the company, however, accepted a note for a part of the premium, it was, in effect, granting a policy loan.[101] About 1884, one company guaranteed loan values up to fifty per cent of the reserve, and from this time on, one company after another has incorporated some such privilege in its contract.[102] New York had passed a law in 1892 permitting companies to make loans on policies,[103] but such loans were not made compulsory until the passage of the legislation subsequent to the Armstrong Investigation.[104] At the close of the century a majority of forty-two representative companies conceded some loan value,[105] and at that time it was regarded "as one of the most important new features in life insurance." [106] At the present time the loan value is usually granted after the same length of time and to the same extent as the cash surrender value. The companies which retain the right to defer cash values, usually apply the same rule to policy loans, unless the loan is used to pay premiums.[107] It is now customary to permit the insured to retain possession of the policy after proper endorsement has been made upon it. Some companies grant to the insured the right to purchase yearly renewable term insurance to the extent of the amount borrowed.[108]

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[96] *Ibid.* The provision is usually not exercised, but is a protection to the company in periods of financial stringency, when an excessively large number of surrenders might result in the forced sale of assets at a sacrifice.

[97] Of the fifty companies, 11 grant participating extended term insurance, and 26 allow participation in the case of paid-up insurance. *Ibid.* With respect to extended term insurance the practice is open to question because of the unfavorable mortality experience which is probable in such a group. Moir, *opus cit.,* p. 183.

[98] Walford, "Cyclopaedia," *opus cit.,* p. 612. In 1831, the directors were advised by counsel that they had no power to grant loans. But in 1858, "it was resolved that the directors might advance moneys on the policies of the Society; but the sum advanced, and 1 year's interest thereon, must never exceed the surrender value of the policy." *Ibid.,* p. 635.

[99] Babbage, *opus cit.,* p. 143. "This is sometimes of considerable convenience to the holders, by enabling them on any emergency to raise money, perhaps for the payment of their premiums."

[100] Hutcheson, W. A., "Some Facts in the Development of Life Insurance in the United States," *P. A. L. I. P.* (1920), vol. 14, p. 68; *Chronicles of The Penn Mutual Life Insurance Company of Philadelphia* (1922), p. 25; Fowler, *opus cit.,* p. 660.

The right of the insured to borrow at a fixed rate of interest is valuable, in that it permits him to continue his policy in force, or to obtain funds in case of financial stress.[109] But in the opinion of some officials, the policy loan is not entirely without defects, since it sometimes induces lapse,[110] and in many cases results in a decrease of insurance protection which is never reinstated.[111] The great extent to which policy loans have increased during the present century has raised the question "as to whether life insurance is not taking upon itself new functions." [112] The president of one company has thus stated the problem: [113]

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[101] For a discussion of the note system, see *supra,* p. 185.

[102] Childs, A. E., "Ultimate Effect of an Unrestricted Right to Borrow on Life Insurance Policies," *P. A. L. I. P.* (1913), vol. 7, p. 26.

[103] Hutcheson, *opus cit.,* p. 68. Apparently such loans were illegal prior to the passage of this law.

[104] For details of such legislation, see the general discussion and citations, *supra,* ch. 3, p. 49, *et seq.,* especially note 67.

[105] McCall, J. A., *A Review of Life Insurance,* N. Y. (1898), p. 50. The policies of 7 companies made provision for loans after being in force two years; those of 16 after three years; those of 5 after five years; those of 14 made no provision.

[106] Lunger, *opus cit.,* p. 185.

[107] *Supra,* note 96. See Appendix X for the detailed provisions of the loan clause.

[108] *Best's Illustrations,* N. Y. (Sept., 1930).

[109] The value of such rights was early recognized. Brown, Samuel, "On the Investments of the Funds of Assurance Companies," *J. I. A.* (1858), vol. 7, p. 251. "It should be remarked, however, that no great amount of the funds can ever be invested in this way. The very fact of an individual having effected and kept up a policy for some years is in favour of the assumption that he is a careful and prudent man—not so liable to require loans for his business purposes as others, and more likely to repay such advances as soon as his temporary difficulties cease."

> In conclusion, then, the real remedy for the present evil of policy loans is found in the fundamental idea of life insurance, the essence of which is true service offered to the public in granting indemnity, for loss of earning capacity, and the nearer we approach the ideal of true service in all departments of this great business, the greater will be the effect in lessening the present unprecedented tendency to borrow on policies,—a tendency which if allowed to go unchecked may become a strong and perhaps disintegrating force.

Reinstatement

In General.

The right of the insured to reinstate his policy after it has lapsed for non-payment of premium is one which has long existed in the life insurance business. In the beginning, however, it had to be exercised within a comparatively short time after the due date of the unpaid premium. As a matter of fact, the grace provision in the policy, as interpreted by the courts, merely gave to the insured the right of reinstatement.[114] After it had become a general practice to pay death claims arising during the period of grace, some companies granted to the policyholder the additional right to reinstate his policy during a period of from thirty days to twelve months.[115] Competition seems to have brought about an extension of the period, as well as its more general use, so that at the time of the Armstrong Investigation, only fourteen of fifty-one representative companies had not incorporated some such provision in their contracts.[116] Subsequent legislation in many states compelled the companies to grant the right of reinstatement.[117] Thirty-eight of the fifty leading companies now permit reinstatement at any time.[118] The policy provision usually states, in substance, as follows:[119]

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[110] For an elaborate study of lapses, see the "Report of the Special Committee on Lapses," *P. A. L. C.* (1925), vol. 20, pp. 150-188.

[111] Huebner, *opus cit.*, pp. 253-256. See also Nollen, H. S., "Recent Fluctuations in Policy Loans," *P. A. L. I. P.* (1921), vol. 15, p. 164. "There is, however, a warning due policyholders who may not have a full appreciation of the responsibility they assume in placing liens upon their policies. Too many regard such loans as a withdrawal of savings for personal use instead of a mortgage upon funds intended for protection of their dependents when in great need. Their failure to understand this vital fact causes neglect in repayment of loans and leads to numerous lapses of insurance and great reduction in the benefits to needy dependents."

[112] Clark, J. R., in a general discussion. *P. A. L. I. P.* (1911), vol. 5, p. 82. The ratio of policy loans and premium notes to reserves seems to have reached a maximum of 39.67% in 1867, and a minimum of 2.78% in 1892. In the former year, premium notes were responsible for the high percentage. At the present time, policy loans are the important element. See Childs, *opus cit.*, Table II, Appendix, pp. 195-196.

[113] *Ibid.*, p. 36.

[114] *Supra*, p. 173, *et seq.*

> This Policy, unless it shall have been surrendered for cash, may be reinstated at any time within five years after default in payment of premium upon evidence of the Insured's then insurability satisfactory to the Company and the payment of all overdue premiums with compound interest at the rate of five per cent a year and upon the payment or reinstatement of any indebtedness to the Company on this Policy together with payment of interest in accordance with the loan provisions of this Policy.

Since the right to reinstate is a valuable privilege under certain conditions, the question of motive must be considered when a policyholder requests reinstatement of a lapsed policy.[120] In order to protect itself against impaired risks, the company requires evidence of insurability. As stated by one writer, the evidence of good health usually takes one of the following forms:[121]

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[115] McCall, *opus cit.,* p. 50. In 1898, of 42 representative companies, 15 had such a stipulation, but the remaining companies made no such concession.

[116] Fouse, *opus cit.,* p. 41. Ten companies limited the right to one year; three to two years; two to three years; six to five years; and sixteen companies made it a matter of contract without limiting the time.

[117] For details of such legislation, see the general discussion and citations, *supra,* ch. 3, p. 49, *et seq.,* especially note 67. The New York Ins. Law, § 101, sub-sec. 10, provides "that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default unless the cash value has been duly paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon such policy with interest at a rate not exceeding six per centum per annum payable annually."

[118] *Best's Illustrations,* N. Y. (Sept., 1930). Nine companies grant the right for 5 years, and three companies for 3 years. The rate of interest charged is usually 6 per cent compounded, but some companies charge only 5 or 5½ per cent, and in some cases only simple interest is collected. One company permits reinstatement upon the receipt of any deficiency in the reserve.

[119] Appendix X.

[120] Jefferies, J. H., "Lapse and Reinstatement," *Insurance,* Ann. Am. Acad. of Pol. & Soc. Sci., Phila. (1905), p. 100.

1. A statement signed by the insured, usually called a Personal Health Certificate.
2. A certificate signed by the insured in the presence of a physician who completes a simple medical examination. For convenience this may be entitled a Medical Health Certificate.
3. A medical examination of the same nature as that required for new insurance.

Court Decisions.

1. *Where the Right to Reinstate Does Not Exist.*

Where a policy has been reinstated, the question frequently arises, whether the reinstated policy is a new contract or merely a revival of the original contract. Where, as in former days, no provision was contained in the policy permitting reinstatement, a failure to pay premiums resulted in a forfeiture, and the company could prescribe new conditions upon reinstatement. The policy was then considered as a new contract, just as if it had been issued for the first time.[122] Some courts, however, took the view that the old policy had to be looked to for the terms, conditions, and stipulation of the new contract.[123]

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[121] Hunter, Arthur, "Requirements as to Health Under Applications for Reinstatement of Policies. Mortality under Reinstated Policies," *T. A. S. A.* (1915), vol. 16, p. 284. According to the mortality experience of one company, the use of a personal health certificate seems to be satisfactory. *Ibid.,* p. 293. See further, Milair, E. C., "Reinstatements," *P. A. L. C.* (1924), vol. 19, pp. 50-80.

[122] Pacific Mut. Life Ins. Co. *v.* Galbraith (1905), 115 *Tenn.* 471, 478; Teeter *v.* United Life Ins. Ass'n. (1899), 159 *N. Y.* 411; Edington *v.* Michigan Mut. Life Ins. Co. (1915), 134 *Tenn.* 188. The idea seems to have been the development of *obiter dicta* in Lantz *v.* Vermont Life Ins. Co. (1891), 139 *Pa.* St. 546.

[123] Mass. Ben. Life Ass'n *v.* Robinson (1898; *Ga.* Supreme Ct.) 30 S. E. 918, 929; Monahan *v.* The Fidelity Mut. Life Ins. Co. (1909), 242 *Ill.* 488; Lindsey *v.* Western Mut. Aid Soc. (1891), 84 *Iowa* 734, 741; Goodwin *v.* Prov. Sav. Life Assur. Assoc. of N. Y. (1896), 97 *Iowa* 226, 238. In New Jersey the court decided that "whether the parties merely reinstate the old and forfeited policy, or create a new contract or new terms, or revive the lapsed contract with additional terms, must be determined from the circumstances." Metropolitan Life Ins. Co. *v.* McTague (1887), 49 *N. J.* L. 587, 590.

2. *Where the Right to Reinstate Exists.*

Where the right to reinstate exists because of statutory enactment or because of a provision in the policy, the insured, upon fulfillment of the conditions imposed, may, in an equity court, compel the company to reinstate the policy.[124] While the courts recognize that the approval required is "something more than a mere ministerial act and involves the exercise of judgment and discretion," [125] nevertheless the company cannot be arbitrary in its refusal to reinstate. Where evidence is introduced that should satisfy the insurer, the contract will be revived.[126]

As a general rule, the courts regard the reinstated policy as embodying the terms of the old contract. The reasons for such a rule have been thus stated by Chief Justice Merrimon: [127]

> "Reinstatement" does not imply reinsurance, the granting or making of a new policy, a new contract of insurance; it fairly implies placing the insured, in respect and relation to the company, the policy, the whole contract of insurance, in the same condition that he occupied and sustained towards them next before the forfeiture was incurred. . . . The provision [of reinstatement] is a substantial, a valuable part of the contract, that the insured has the right to avail himself of, and the defendant has no right to deprive him of it, any more than to deprive him of the insurance if no forfeiture had been incurred.

3. *Reinstatement and Incontestability.*

Generally, the presence of an incontestable clause in the original policy will not protect the insured against false statements made to secure reinstatement, at least, not until the passage of such time from the date of reinstatement as is specified in the incontestable clause in the original policy. In other words, the incontestable clause starts to operate from the date of reinstatement. This rule seems to be applied whether the policy is regarded as a new or an old contract.[128]

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[124] Bradbury *v.* Mut. Res. Fund Life Ass'n (1895), 53 *N. J.* E. 306.

[125] Lane *v.* Insurance Company (1906), 142 *N. C.* 55, 58.

[126] Thompson *v.* Postal Life Ins. Co. (1919), 226 *N. Y.* 363.

[127] Lovick *v.* The Providence Life Ass'n (1892), 110 *N. C.* 93, 97; Coburn *v.* Life Indemnity and Investment Co. (1893), 52 *Minn.* 424.

[128] "Where a life insurance policy is issued providing that it shall not be contestable after one year, and, after lapsing for nonpayment of premiums, is revived in accordance with its provisions, the contest clause is also revived, and the company is not barred from contesting the policy within one year after the revival, although several years have elapsed since the first issuance of the policy." State Mut. Life Ins. Co. *v.* Rosenberry (1915;

In Alabama, however, the courts have held that the reinstated policy is contestable only during the stipulated period measured from the original date of issue.[129]

One writer has thus summarized the various legal questions involved in reinstated contracts:[130]

> In considering the cases on these various interrelated questions, we have found: first, that the insurer has no right to impose restrictions in a reinstated policy which were not in the original policy; second, that the reinstatement is effective from the time the insured has fully performed the conditions precedent to reinstatement fixed by his policy; third, that a limitation of liability for suicide in the first policy year will not protect the company from a claim growing out of suicide within a year after reinstatement unless it is also within a year from the original date of issue; fourth, that by the weight of authority, a reinstated policy is subject to the law in effect at the time and place of original issue, and not that in effect at the time and place of reinstatement; and fifth, that a reinstated policy is contestable for misrepresentations made in obtaining reinstatements, at least during the space of time which the policy specifies as the contestable period.

Tex. Ct. Civ. App.) 175 S. W. 757; *ibid.* (1919; *Tex.* Comm. App.) 213 S. W. 242. See also Bottomley *v.* Metropolitan Life Ins. Co. (1898), 170 *Mass.* 274; Teeter *v.* United Life Ins. Ass'n (1899), 159 *N. Y.* 411; Thorner *v.* John Hancock Mut. Life Ins. Co. (1914), 149 *N. Y. S.* 345; McCormack *v.* Security Mut. Life Ins. Co. (1917), 220 *N. Y.* 447; Pacific Mut. Life Ins. Co. *v.* Galbraith (1905), 115 *Tenn.* 471; Ash *v.* Fidelity Mut. Life Ass'n (1901), 26 *Tex.* Civ. App. 501; Fraser *v.* Aetna Life Ins. Co. (1902), 114 *Wis.* 510. See further Bates, H. C., "Contestability of Reinstated Policies," *P. A. L. I. C.* (1913-21), Paper 54; Annotation 46 L. R. A. (N. S.), 1056.

[129] Mutual Life Ins. Co. of N. Y. *v.* Lovejoy (1917), 201 *Ala.* 337; *ibid.* (1919), 203 *Ala.* 452.

[130] Cox, Berkeley, "Reinstatement, A Separate Contract," *P. A. L. I. C.* (1925-27), vol. 3, p. 664. See also, Miller, W. B., "Reinstatements," *P. A. L. C., L. S.* (1924), vol. 17, pp. 66-93.

CHAPTER XI

THE RIGHTS OF THE BENEFICIARY

The law defining the rights of the beneficiary under a life insurance policy was formulated by the courts at a time when the contract was much more limited in its scope. At that time the policy was primarily a contract between the insurer and the beneficiary, concerning the proceeds payable upon death. In the absence of surrender values, there was nothing that could be used by the insured. Today the contract is a thing of present as well as future value, and the control of the policy is of prime importance to the insured.[1]

As stated by one authority, a life contract really consists of two contracts: [2]

> One is a contract for the payment of money in the future upon the happening of a contingency namely, the death of the insured; the other is a contract for the payment of money on demand after a certain time. One is executory, the other is executed. The first is a promise to pay the beneficiary; the second is a promise to pay the insured. The first can never be performed, possessed or enjoyed in the lifetime of the insured; the second can never be performed, possessed or enjoyed, *except* in the lifetime of the insured. The beneficiary can enjoy the first, but never the second; and the insured can enjoy the second, but never the first. In a real as distinguished from a technical sense, the insured is as much a beneficiary of the policy as is the payee of its proceeds at his death. Each of these contracts is susceptible of being legally conceived independently of the other; each may stand alone and be the subject of transfer without affecting the other. There is nothing inconsistent between the ideas of full ownership of rights under the one and under the other, in different persons.

But the attitude of the courts has not changed to meet the new conditions. Relief has come through the inclusion of limiting clauses in the policy itself, and in a modification of the various statutes enacted for the protection of beneficiaries.

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[1] Boughton, E. J., "Creditors and Surrenders," *P. A. L. I. C.* (1925-27), vol. 3, pp. 323, 324.

[2] *Ibid.*, pp. 336, 337.

Beneficiary Ownership.

Where a person takes out a policy of insurance on his own life, and names a third party as beneficiary, in the absence of express conditions in the contract to the contrary, the beneficiary is immediately vested with an interest of which he may not be deprived by the insured. In a leading case,[3] it was held:

> That a policy of life insurance, and the money to become due under it, belong, the moment it is issued, to the person or persons named in it as beneficiary or beneficiaries, and that there is no power in the person procuring the insurance, by any act of his, by deed or by will, to transfer to any other person the interest of the person or persons so named. The person designated in the policy is the proper person to receipt for and to sue for the money. The principle is that the rights under the policy become vested immediately upon its being issued, so that no person other than those designated in it can assign or surrender it, and that in such assignment or surrender all the persons must concur, or the interest of those not concurring is not affected.

In 1888, the Supreme Court of the United States accepted the above viewpoint as being the general rule.[4] No impairment of the beneficiary's interest, therefore, may arise, without his consent, out of any action of the insured, or of the company, or of the two acting together.[5] The only right which remains to the insured is that of discontinuing the payment of future premiums.[6] So, too, the interest vests immediately even in the case of endowment, accumulation, and tontine policies,[7] but such interest ceases upon the expiration of the endowment or tontine period when the policy provides for payment to the insured, if living.[8]

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[3] Ricker *v.* Charter Oak Life Ins. Co. (1880), 27 *Minn.* 193. The court quoted Bliss on Life Ins., 2d ed., §§ 317, 337. See also Wilburn *v.* Wilburn, 83 *Ind.* 55; The Succession of Kegler, 23 *La.* 455; Pilcher *v.* N. Y. Life Ins. Co. (1881), 33 *La.* Ann. 322. As one writer points out, the doctrine of beneficiary ownership may be traced to Bliss, who expressed it as his opinion without citing any cases. "He *apprehended,* he said, that a life insurance policy created an irrevocable trust. He *thought* the courts in this country would so hold although a different conception prevailed in England." Boughton, *opus cit.,* pp. 319, 320.

[4] Central Bank of Washington *v.* Hume (1888), 128 *U. S.* 195, 206. See also Timayenis *v.* The Union Mut. Life Ins. Co. (1884; *U. S.* cir. ct. 2), 22 Blatchf. 405, 408. By Wallace, J.: "Where the policy designates a person to whom the insurance money is to be paid, the person who procures the insurance, and who continues to pay the premiums, has no authority to change the designation or title of the money. . . . He may be under no obligation to continue to pay the premiums, but, if he does, the person originally designated in the policy will derive the benefit; and any change of designation can only be made by his authority."

[5] Missouri State Life Ins. Co. *v.* Crabtree (1916), 124 *Ark.* 214; Couch, G. J., *Cyclopedia of Insurance Law,* Lawyers Co-operative Pub. Co., Rochester (1929), vol. 2, p. 822.

It may also be stated as a general rule that where the beneficiary dies before the insured, "without having consented to a change of beneficiary, the insured cannot, without a reservation in the policy giving him such right, change the beneficiary; and the insurance passes to the estate of the deceased beneficiary." [9] Where the interest of a beneficiary is a contingent one, as where the policy is payable to the wife, if living, and if not living, to her children, some courts hold that the "personal representatives of the child, who had pre-deceased the wife," cannot be substituted as parties to the contract.[10]

Exception.

The courts of Wisconsin have repeatedly held that "one who insures his own life for the benefit of another and pays the premiums himself may at any time dispose of the policy, or may will it away without consent of the beneficiary." [11] This doctrine was established in the case of Clark *v.* Durand,[12] in which it was held that the beneficiary was not a party to the contract. The decision of the court, as delivered by Chief Justice Dixon, was in part as follows:[13]

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[6] Morgan *v.* Prudential Ins. Co. (1923), 209 *Ala.* 110.

[7] Condon *v.* N. Y. Life Ins. Co. (1918), 183 *Iowa* 658, 663.

[8] Carpenter *v.* Knapp (1897), 101 *Iowa* 712.

[9] Condon *v.* N. Y. Life Ins. Co. (1918), 183 *Iowa* 658, 662. See also Couch, *opus cit.,* vol. 2, p. 1006, § 338; Continental Life Ins. Co. *v.* Palmer (1875), 42 *Conn.* 60; Glanz *v.* Gloeckler (1882), 104 *Ill.* 573; Swan *v.* Snow (1866), 11 Allen (*Mass.*), 224 Belden *v.* Belden (1920), 183 *N. Y.* S. 350; The U. B. Mutual Aid Society *v.* Miller (1884), 107 *Pa.* 162. As stated by the court in Shepard & Co., *v.* N. Y. Life Ins. Co. (1913), 87 *Conn.* 500, 504: "It is not material whether the contract is to be governed by the law of New York or of Connecticut, for the rule is well settled in both States that the beneficiary named in a policy of life insurance, not containing language inconsistent therewith, takes a vested interest which passes at death to the legal representatives of the beneficiary, and which cannot, after delivery of the policy, be divested by the life insured, or the insurer, or both acting together," citing Garner et al *v.* Germania Life Ins. Co. (1888), 110 *N. Y.* 266; Bradshaw *v.* Mutual Life Ins. Co. (1912), 205 *N. Y.* 467.

[10] Walsh *v.* The Mutual Life Ins. Co. (1892), 133 *N. Y.* 408, 419. The interest of such beneficiaries is merely contingent, and terminates with their death.

[11] Boehmer *v.* Kalk (1913), 155 *Wis.* 156, 157.

[12] (1860), 12 *Wis.* 223.

> So far as he [the beneficiary] was concerned, it was a mere proposed gratuity or gift, a voluntary thing. . . . He had no vested right in the policy or in the moneys secured by it, and could have none until after the death of Mrs. Clark, he surviving her; and then only in the event of the contract, and the intention of the parties, remaining the same, and of her, or some other person in his behalf, having kept up the premiums. . . . Considering the policy, as it was in fact, an executory contract between the company and Mrs. Clark, and the defendant consenting to act as trustee, no reason can be perceived why it was not, like every other executory agreement, subject to such disposition, changes and modifications, as the several parties to it might see fit or consent to make.

Where the Right to Change the Beneficiary Is Reserved.

With the appearance in policies of insurance of clauses providing for cash and loan values, the injustice of the general rule of beneficiary ownership became more pronounced, and as a result of popular opinion, the companies began to include some stipulation in the policy which reserved to the insured the right of disposing of his insurance as he saw fit. The first clause of this nature seems to have been inserted as a part of the contract by the Equitable Life Assurance Society, in 1896.[14] Despite objections to a clause of this nature, it gained rapidly in public favor, approximately thirty-three companies having incorporated it by the year 1901.[15] All companies now grant this right, if desired, and, in substance, the following stipulation appears in the contract:[16]

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[13] *Ibid.*, p. 233. See also Meggett *v.* Northwestern Mut. Life Ins. Co. (1909), 138 *Wis.* 636; "This rule was changed as far as policies in favor of married women are concerned by ch. 376 of the Laws of 1891, which amended sec. 2347 of the Revised Statutes of 1878 by adding thereto in substance clauses providing that any such policy either assigned to or made payable to a married woman or to a trustee for her benefit should 'be the sole and separate property of such married woman,' free from the 'control, disposition or claims of her husband.'" Boehmer *v.* Kalk (1913), 155 *Wis.* 156, 158.

[14] Discussion by Mr. Van Cise of an article by William McCabe, "On the Power to change the Beneficiary," *T. A. S. A.* (1901-03), vol. 7, pp. 153, 154. The clause provided as follows: "V. *Change of Beneficiary.* This policy is issued with the express understanding that the assured may, from time to time during its continuance, change the beneficiary or beneficiaries, by filing with the Society a written request duly acknowledged, accompanied by this policy, such change to take effect upon the endorsement of the same on the policy by the Society, provided this policy has not been assigned and notice of such assignment recorded on the books of the Society, or, if assigned, that all assignments shall have been duly cancelled or released on the books of the Society." *Ibid.*, p. 158.

> Unless otherwise provided by endorsement on this Policy or unless there be an existing assignment of this Policy other than to the Company, the Insured, may, from time to time, while the Policy is in force, change the beneficiary by filing written notice at the Home Office of the Company accompanied by the Policy for endorsement. Such change shall take effect upon endorsement of the Policy by the Company.
>
> The interest of any beneficiary who dies before the Insured shall vest in the Insured unless otherwise provided in this Policy.

A provision which permits the insured to change the beneficiary from time to time is neither unusual nor invalid.[17] Under such conditions the beneficiary has no vested interest in the money to be paid, but only an expectancy.[18] Where such a change has been made, it is binding on the former beneficiary and his interest in the policy ceases.[19] But "the mode and manner of making such change by the insured is subject to reasonable regulations, provided that such regulations are expressed in the insurance policy."[20] The naming of a beneficiary is an integral part of the contract, "and can not be changed without a compliance with the stipulations in the policy."[21] But where the stipulations have been substantially complied with, the courts will enforce the intention of the insured.[22] The rule has been stated as follows by a Federal court: [23]

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[15] *Ibid.*, p. 157 *et seq.* For the pros and cons, morally, of reserving the right to change, see pp. 165-167.

[16] Appendix X.

[17] Carpenter *v.* Carpenter (1917), 227 *Mass.* 288.

[18] Slocum *v.* Metropolitan Life Ins. Co. (1923), 245 *Mass.* 565, 570; McEwen *v.* N. Y. Life Ins. Co. (1919), 42 *Cal.* App. 133; Cummings *v.* Conn. Gen. Life Ins. Co. (1928), 101 *Vt.* 73. In the case of McDonald *v.* McDonald (1924), 212 *Ala.* 137, 141, it was held that a "right cannot be considered a vested right unless it is something more than a mere expectancy as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enjoyment of property," quoting 40 Cyc. 199. It is interesting to note that in the earlier decisions in South Carolina the courts made no distinction between policies reserving the right to change the beneficiary and those not doing so. They consistently held "that the beneficiary acquired upon the issuance of the policy, a vested interest in the proceeds." Antley *v.* N. Y. Life Ins. Co. (1925), 139 *S. C.* 23, 29.

[19] Henrich *v.* Prior (1925), 84 *Ind.* App. 211, 214.

[20] Atkinson *v.* Metropolitan Life Ins. Co. (1926), 114 *Ohio* St. 109.

[21] Chance *v.* Simpkins (1917), 146 *Ga.* 519, 520; Indiana Nat'l. Life Ins. Co. *v.* McGinnis (1913), 180 *Ind.* 9, 21.

> Generally the prescribed regulations must be substantially complied with before a change of beneficiaries is effected, but where the insured has pursued the course prescribed, and has done all that he can possibly do to change the beneficiary, and a sufficient time has elapsed for the change to have become effective in the usual course of business before his death, a court of equity will consider that done which ought to have been done.

Where the right to change the beneficiary has not been legally exercised, the interest of the named beneficiary becomes vested at the death of the insured, and such interest cannot be affected by any subsequent acts of the insurance company.[24]

While the rule is generally held that in the absence of a right to change the beneficiary, the latter acquires a vested interest, which prevents surrender or borrowing by the insured, some courts have held that the rights of the beneficiary are subject to the insured's privilege of surrendering the policy or borrowing its loan value, when such privileges are expressed in the contract.[25] Thus, a Pennsylvania court has held that where the policy grants the right to borrow, the insured may exercise the privilege even where he has not reserved the right to change the beneficiary. After admitting the existence of a vested interest, the court continued: [26]

> We cannot, however, accede that the interest residing in the beneficiary is so absolutely vested that it cannot be divested. If she had died before her husband her interest would have died with her. If he had failed to keep the policy alive her interest of course would have ceased. Appellant argues that it is useless to say that she has a vested interest if he can borrow money against the policy; that the right to borrow is in reality a right to exhaust the benefits of the policy presently. There is force in this contention but the answer is that the parties had made their contract and the interest in the

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[22] Lewis *v.* Reed (1920), 48 *Cal.* App. 742; Henrich *v.* Prior (1925), 84 *Ind.* App. 211, 214; Arnold *v.* Newcomb (1922), 104 *Ohio* St. 578.

[23] Farley *v.* United States (1923); Dist. Ct. D., Oregon), 291 *F.* 238.

[24] McDonald *v.* McDonald (1924), 212 *Ala.* 137, 141.

[25] Duffy *v.* Metropolitan Life Ins. Co. (1900), 94 *Me.* 414; Travelers' Ins. Co. *v.* Healy (1898), 49 *N. Y. S.* 29; Manhattan Life Ins. Co. *v.* Smith (1886), 44 *Ohio* St. 156; Boughton, *opus cit.,* p. 340.

[26] Schuberth *v.* Prudential Insurance Co. (1925), 86 *Pa.* Super. Ct. 80, 82. See also Morgan *v.* Prudential Ins. Co. (1923), 209 *Ala.* 110, 112.

> beneficiary, although vested, is subject to the provisions of the contract. . . . We certainly cannot construe the policy which specifically provides for the right of the insured to borrow that such borrowing must be with the consent of the beneficiary.

Rights of Creditors.

The question of the extent to which the cash value and the proceeds of life insurance policies are available to creditors of the insured in case of insolvency is of great importance. Both the courts and the various state legislatures have indicated that a moderate amount of insurance may be taken for family protection without its being available for the insured's debts. The attitude of the Supreme Court of the United States has been thus expressed by Mr. Chief Justice Fuller:[27]

> This argument in the interest of creditors concedes that the debtor may rightfully preserve his family from suffering and want. It seems to us that the same public policy which justifies this, and recognizes the support of wife and children as a positive obligation in law as well as morals, should be extended to protect them from destitution after the debtor's death, by permitting him, not to accumulate a fund as a permanent provision, but to devote a moderate portion of his earnings to keep on foot a security for support already, or which could thereby be lawfully obtained, at least to the extent of requiring that, under such circumstances, the fraudulent intent of both parties to the transaction should be made out.

The first law in this country for the protection of life insurance proceeds against creditors was enacted by the state of New York in 1840.[28] Massachusetts passed a similar law in 1844.[29] Other states followed, so that by the year 1875 such statutes were general.[30] While some states provide for exemption only when a married woman takes out the policy, the more common provision permits exemption where a person insures his own life in favor of his wife and children, or a named beneficiary, frequently subject to a limitation as to the amount which shall be exempt.[31] In some states, too, assignment by a married woman of her rights under a policy was prohibited. This was the case in New York for many years, but such assignment is now valid.[32]

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[27] Central Bank of Washington *v.* Hume (1888), 128 *U. S.* 195, 211.

[28] N. Y. L. (1840), ch. 80, p. 59. Passed April 1. Section one provided that a married woman might insure the life of her husband, "and in case of her surviving her husband, the sum or nett amount of the insurance becoming due and payable, by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid shall exceed three hundred dollars." Section two provided that in case the wife should predecease her husband, the children, or their guardian, might receive the money for their own use. It is interesting to note that this was the "first general law dealing directly and exclusively with life insurance in this country." Knight, C. K., *The History of Life Insurance in the United States to 1870,* Phila. (1920), p. 95. Some companies inserted such a provision in their charters. They "seem to

These laws were upheld by the courts and were an important influence in the development of the rule of beneficiary ownership. As stated in the case of Gould *v.* Emerson,[33] "the manifest purpose is, not only to prevent the creditors from reaching the fund by proceedings in law or equity, but to restrain the debtor from revoking, in a moment of caprice or embarrassment, the trust which he has once created upon a meritorious, and, by the statute, a sufficient consideration."

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have attached great importance to the provision, possibly because many merchants in country towns would insure for some small amount if their policies were made free from the contingencies of their trade." *Ibid.,* p. 108.

[29] Mass. L. (1844), ch. 82. The law exempted the policy whether it was effected by a married woman herself, or by her husband, or by any other person.

[30] Hine, C. C., *The Insurance Statutes of the United States and Canada,* N. Y. (1876). See also *T. A. S. A.* (1901-03), vol. 7, p. 170.

[31] Couch, *opus cit.,* p. 936, § 330.

[32] "A policy of insurance on the life of any person for the benefit of a married woman is also assignable and may be surrendered to the company issuing the same, by her, or her legal representative, with the written consent of the assured." N. Y. Con. L. (1923), ch. 14, § 53. (Section 52 of the Domestic Relations Law.) See also Wheeland *v.* Atwood (1899), 192 *Pa.* 237; Entwistle *v.* Travelers Ins. Co. (1902), 202 *Pa.* 141; Canterbury *v.* Northwestern Mut. Life Ins. Co. (1905), 124 *Wis.* 169; Lewis, C. T., "Laws Protecting Life Insurance Against Creditors," *Proc. Fourth International Congress of Actuaries* (1904), vol. 1, p. 873 *et seq;* Henshaw, S. K., "Rights of Beneficiaries as Affected by Assignments," *P. A. L. I. C.* (1925-27), vol. 3, pp. 45-59. For a review of legislative changes affecting exemption in N. Y. and Mass., see Gould *v.* Emerson (1868), 99 *Mass.* 154; Bailey *v.* Wood (1909), 202 *Mass.* 562, 574. "The right of the wife extends not only to policies expressed for her benefit when issued, but also to those which after issue, are assigned or in any way made payable to her for her benefit, while the right of any other beneficiary is confined to policies expressed at the time of their issue to be for his benefit." See further, Guardian Trust Co. *v.* Straus (1910), 123 *N. Y. S.* 852; Grems *v.* Traver (1914), 148 *N. Y. S.* 200; affirmed in 149 *N. Y. S.* 1085; Ecker *v.* Myer (1922), 194 *N. Y. S.* 320.

[33] Gould *v.* Emerson (1868), 99 *Mass.* 154, 156.

Such laws are constitutional, and do not impair in any way the obligation of contracts[34] or deprive citizens of the equal protection of the laws.[35] In pointing out that such legislation is not arbitrary, unreasonable or capricious, a Tennessee court stated:[36]

> This court, and other courts of last resort, have long been in agreement upon the point that contracts of insurance are proper subjects of classification in matters of legislation. Such contracts are sufficiently distinctive in character to bear a classification separating them from other contracts; and more than this, they are sufficiently distinctive in character to bear a classification as between themselves.

As stated in the case of Central Bank of Washington *v.* Hume,[37] where the beneficiary has a vested interest in the policy, the creditors have no interest in the proceeds of the insurance, and cannot deprive the beneficiary of its benefits. But where the policy is made payable to the insured, or to his estate or legal representatives, such policy is subject to the claims of creditors in case of bankruptcy.[38] So, too, where the policy is payable to a beneficiary other than the insured, creditors generally may obtain the cash surrender value of the policy when the insured has reserved the power to change the beneficiary.[39] Whether the value of the policy, however, passes to the trustee as an asset depends upon the exemption statute in force in the individual state. It has been from earliest times the policy of Congress to give effect to state exemption laws,[40] and the National Bankruptcy Act of 1898 contains such a provision.[41] The Act also permits a bankrupt, having an insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, to carry such policy free from the claims of creditors by paying the cash surrender value to the trustee within thirty days; in the absence of such action, the policy passes to the trustee.[42] This latter section, however, is effective only when the policy is not exempt by the state.[43] Legislation granting exemption from the claims of creditors, even where the right to change the beneficiary is reserved, or where the policy is made payable to the estate of the insured, is becoming common.[44] It should be noted, however, that even where there is no specific exemption statute, the creditors have no interest in the

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[34] Succession of Le Blanc (1917), 142 *La.* 27, 35.

[35] Brown *v.* Steckler (1918), 40 *N. D.* 113, 118. Equal protection of the laws means "that no person or class of persons shall be denied the same protection of the law which is enjoyed by other persons or other classes in the same places and in like circumstances."

[36] Hamilton Nat. Bank *v.* Amster (1915), 134 *Tenn.* 537, 547. But a law discriminating against old line companies has been held unconstitutional. Williams *v.* Donough (1902), 65 *Ohio* St. 499. And where the provisions were applicable to contracts issued before the passage of the law, it was held that the welfare of the public does not warrant such an extension of the police power. Boehmer *v.* Kalk (1913), 155 *Wis.* 156, 158.

[37] (1888), 128 *U. S.* 195.

[38] Barbour *v.* Conn. Mut. Life Ins. Co. (1891), 61 *Conn.* 240, 248; Schad's Appeal (1878), 88 *Pa.* 111; Couch, *opus cit.,* vol. 2, p. 893.

[39] Cohen *v.* Samuels (1917), 245 *U. S.* 50, 53. As stated by Mr. Justice McKenna: "It is true the policies in question here are not so payable, but they can be or could have been so payable at his own will and by simple declaration. Under such conditions to hold that there was nothing of property to vest in a trustee would be to make an insurance policy a shelter for valuable assets and, it might be, a refuge for fraud." See also Frederick *v.* Fidelity Mut. Life Ins. Co. of Phila. (1921), 256 *U. S.* 395. The New York courts, however, hold that the cash value is not available until the insured has actually exercised the right to change the beneficiary. Maurice *v.* Travelers' Ins. Co. (1923), 201 *N. Y.* S. 369. From the syllabus: "Under Domestic Relations Law, § 52, giving a wife an insurable interest in her husband's life, and to some extent exempting from claims of his creditors insurance in her

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favor, a life policy designating insured's wife as beneficiary, and reserving the right to change the beneficiary, gives the wife an interest therein which is not subject to the claims of insured's creditors, and can be defeated only by exercising the power to change the beneficiary, and a receiver cannot, in supplementary proceeding, in the absence of equitable reasons for so doing compel insured to exercise the power, so as to enable receiver to reach the surrender value for the benefit of insured's creditors."

[40] Holden *v.* Stratton (1905), 198 *U. S.* 202, 214.

[41] Act of July 1, 1898, c. 541, § 6.

[42] *Ibid.,* § 70-a.

[43] Holden *v.* Stratton (1905), 198 *U. S.* 202, 211. In this case effect was given to the law of the State of Washington (Laws of 1895, p. 336, Laws of 1897, p. 70), exempting the proceeds of endowment policies even if made payable to the estate of the insured. See also Hiscock *v.* Mertens (1907), 205 *U. S.* 202; Smith *v.* Metropolitan Life Ins. Co. (1930; C. C. A. 3), 43 *F.* (2d) 74.

[44] See, for example, Ala. Code 1896, § 2607; N. J. Ins. L., §§ 38, 39; N. Y. L. (1927), ch. 468, p. 1155. The provision of the Florida law is very broad. Chapter 10154, Acts 1925, § 1, reads as follows: "The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the State of Florida, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor or creditors of the person whose life is so insured, unless the insurance policy was effected for the benefit of such creditor or creditors." The Pennsylvania law, approved June 28, 1923 (P. L. 884), provides as follows: "Section 1. Be it enacted, etc., That the net amount payable under any policy of life insurance or under any annuity contract upon the life of any person, heretofore or hereafter made for the benefit of or assigned to the wife or children or dependent relative of such person, shall be exempt from all claims of the creditors of such persons arising out of or based upon any obligation created after the passage of this act, whether or not the right to change the named beneficiary is reserved by or permitted to such person." For a history of such legislation in Pennsylvania, see Irving Bank, Appellant *v.* Alexander (1924), 280 *Pa.* 466.

policy, where it has no cash surrender value.[45] Furthermore, creditors have no right to the proceeds of a policy, matured by death, even where the actual cash surrender value at the time of bankruptcy is negligible. The United States Supreme Court has pointed out that it was the intention of Congress that "the bankrupt should be permitted to retain the insurance which, because of advancing years or declining health, it might be impossible for him to replace. . . . We think it was the purpose of Congress to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset, otherwise to leave to the insured the benefit of his life insurance." [46]

Rights of the Creditors of the Beneficiary.

In the absence of statutory provision, the creditors of the beneficiary are entitled to the proceeds of the insurance as soon as a right thereto vests in the beneficiary.[47] The reason for such a doctrine has been thus stated by Justice Werner: [48]

> Just as any money or property which is left by a decedent may be taken for the debts or liabilities of those to whom it is given after it has been paid to them, so the proceeds of an insurance policy or certificate may be compulsorily devoted to the same purpose when the beneficiary comes into possession thereof.

Misappropriated Funds.

Where premiums are paid out of misappropriated funds, the right to follow the embezzled funds is not lost merely because such money was used to buy life insurance.[49] As stated by a Wisconsin court, "The statutes guarding the rights of married women in insurance policies and homesteads are beneficent statutes, which are liberally construed in their behalf. But they are not designed to encourage fraud or to make such property a safe depository for stolen funds." [50]

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[45] Barbour *v.* Conn. Mut. Life Ins. Co. (1891), 61 *Conn.* 240, 248.

[46] Burlingham *v.* Crouse (1913), 228 *U. S.* 459, 473.

[47] Murray *v.* Wells (1880), 53 *Iowa* 256; Couch, *opus cit.,* vol. 2, p. 1030, § 347. In the case of Holmes, appellant, *v.* Marshall, 145 *Cal.* 777, the court held that under certain conditions the exemption extends "not only against the debts of the person whose life was insured, and who paid the premiums, but also to the debts of the beneficiary to whom it is payable after the death of the insured." See also S. Dak. L. (1930), ch. 170.

[48] Bull *v.* Case (1901), 165 *N. Y.* 578, 581.

[49] Couch, *opus cit.,* vol. 2, p. 1042, § 352.

[50] Truelsch *v.* Miller (1925), 186 *Wis.* 239, 252.

Death of the Insured at the Hands of the Beneficiary.

As a matter of public policy, where the beneficiary or the assignee has feloniously taken the life of the insured, he is not entitled to the insurance proceeds.[51] The reasons underlying such a doctrine have been well stated by Justice Earl:[52]

> . . . all laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes.

But the question of public policy does not arise between the legal representatives of the insured and the company. The policy stands as without a beneficiary and the proceeds become the property of the estate.[53] The courts see no reason for excusing the company from paying such claims, especially where premiums have been paid for many years, so long as the person responsible for the death does not benefit by his act.[54] Public policy, however, prevents both the guilty person, and anyone claiming through such person, from receiving the insurance funds.[55]

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[51] Kascoutas *v.* Federal Life Ins. Co. (1922), 193 *Iowa* 343, 350; Slocum *v.* Metropolitan Life Ins. Co. (1923), 245 *Mass.* 565; Filmore *v.* Metropolitan Life Ins. Co. (1910), 82 *Ohio* St. 208. The U. S. Supreme Court has stated that it "would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired." N. Y. Mut. Life Ins. Co. *v.* Armstrong, Adm'x. (1886), 117 *U. S.* 591, 600. See also L. R. A. 1917 B. 671.

[52] Riggs *v.* Palmer (1889), 115 *N. Y.* 506, 511.

[53] Kascoutas *v.* Federal Life Ins. Co. (1922), 193 *Iowa* 343, 350; Welch *v.* Travelers' Ins. Co. (1919), 178 *N. Y. S.* 748.

[54] Cleaver *v.* Mutual Res. Fund Life Ass'n. [1892], 1 Q. B. (*Eng.*) 147, 153.

[55] *Ibid.,* p. 155.

CHAPTER XII

CLAUSES AFFORDING ADDITIONAL PROTECTION

The Disability Clause

The proceeds of the majority of life insurance policies are available only at the time of the death of the insured. They provide financial help for the insured's dependents. But the family income may be interrupted by accident or ill health. If the resulting disability is total and permanent, a greater burden is placed upon dependents than if the income-producer had died prematurely. The need for some sort of protection in case of serious income interruption caused by accident or ill health is apparent.

For an additional premium the holder of a life insurance policy may obtain coverage against the hazard of total and permanent disability. The clause, despite much early opposition, is now issued by practically all life insurance companies.[1]

Development of Disability Protection.

1. *In General.*

Efforts to alleviate financial suffering caused by disability may be traced to the friendly societies of Great Britain, to the gilds which flourished during the middle ages, and finally to the gilds of ancient Rome and Greece.[2] In the United States, insurance against incapacity arising out of sickness was first written by the Massachusetts Health Insurance Company of Boston, founded in 1847.[3] Three years later the Franklin Health Assurance Company of Massachusetts was authorized to write accident insurance.[4] While a number of companies were organized to write these lines, lack of sufficient training, experience, and resources prevented extensive development.

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[1] *Best's Illustrations,* N. Y. (Sept., 1930).

[2] Dingman, H. W., "Disability Insurance: Moral Hazard," *P. A. L. I. M. D.* (1924-25), vol. 12, p. 263.

[3] *Ibid.,* p. 266.

[4] Kulp, C. A., *Casualty Insurance,* Ronald Press, N. Y. (1928), p. 549.

Accident insurance, however, continued to be written, although the policies were unsatisfactory and many of the companies were unsound. Satisfactory accident insurance may be said to date from about 1890.[5] Health insurance, on the other hand, probably because of the extreme moral hazard,[6] did not survive, and for a period of about fifty years it was written in America only by the fraternal insurance associations.[7] Modern health insurance began in 1897 when the accident companies added this coverage to their policies.[8] Since the beginning of the present century competition and legislation have done much to provide sound and broad coverage.

2. *Life Insurance.*

Although disability clauses were incorporated in life insurance policies in Germany as early as 1876, they were issued in this country for the first time in 1896.[9] Eight years elapsed before any other company adopted such a provision, and at the end of ten years only seven companies were interested. At the end of fifteen years about one hundred and fifty companies issued some sort of clause.[10] The widespread introduction of this feature may be attributed to the desire of newly established companies to secure business.[11] Over 78 per cent of the companies using the clause on January 1, 1912, were organized subsequent to 1901.[12] Competition gradually forced the older companies to issue such clauses.

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[5] *Ibid.*, p. 550.

[6] Dingman, *opus cit.*, p. 269. "Moral hazard, then as now, was the great obstacle. Injuries being objective in most instances give demonstrable evidence of their actuality and moral hazard is a lesser factor than in health insurance with its many indefinite and feigned claims. Sickness claims were too many, in 1850, and resistance of unfair claimants too inadequate. Indeed, 75 years later, unfair claims still are too many and resistance too weak. Loss ratios in casualty companies are persistently higher with health coverage than with accident protection."

[7] *Ibid.*, p. 268.

[8] Kulp, *opus cit.*, p. 552.

[9] Mudgett, B. D., *"The Total Disability Provision in American Life Insurance Contracts,"* Phila. (1915), pp. 1, 2. The company was the Fidelity Mutual Life Insurance Company of Philadelphia.

[10] Rhodes, E. E., "Disability Provisions in Life Insurance Policies," *The Pelican,* Mutual Benefit Life Ins. Co. (1930), vol. 28, p. 173. Moir, Henry. "Disability Benefits—Insuring Insurance," *P. A. L. I. P.* (1913), vol. 7, p. 48.

[11] Mudgett, *opus cit.*, pp. 5, 6.

[12] *Ibid.*

Underwriting Differences.

The problem of granting insurance covering this hazard differs somewhat in its underwriting aspects from that presented by life insurance. These differences were well stated many years ago by Henry Tompkins.[13]

> It is far more difficult to obtain facts relating to sickness than to death because, in the first place, death has one common meaning among all classes; but it is not so with the word "sickness." Also sickness may be, and often is, feigned; but it is not so with mortality. A death also occurs but once to an individual; but sickness attacks an individual at various periods of his life, and at each time with a different degree of intensity and duration.

The question thus arises as to whether disability coverage is properly within the scope of a life insurance company's activities. Legally, the benefit could be granted by most companies, even under old charters, but enabling legislation was necessary in certain states.[14] The courts of Massachusetts upheld in substance the contention of the insurance department that accident and health insurance could not be written in the same policy with life insurance.[15] This was changed by legislation in 1907, amended in 1912.[16] New York likewise passed such an act in 1912.[17] Wisconsin with certain limitations permitted life insurance companies to grant disability benefits.[18] Oregon passed an act that was slightly different in principle.[19] Section six of an act regulating accident and health policies provided that the act did not apply "to contracts of life insurance or contracts supplemental thereto which shall contain provisions intended to safeguard such life insurance against lapse or that shall provide a special surrender value therefor in the event that the insured thereunder shall, by reason of accidental bodily injury or disease, be unable to continue the premium payments thereon." [20] Prior to 1910, Canadian life companies could not grant disability benefits. In that year, however, a law was passed permitting a restricted benefit. The provision was liberalized in 1917.[21]

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[13] Assur. Mag., 5—6—1854, quoted by Dingman, *opus cit.,* p. 268.

[14] Moir, *opus cit.,* p. 48.

[15] *P. N. C. I. C.* (1917), vol. 48, p. 90.

[16] Moir, *opus cit.,* p. 48.

[17] N. Y. L. (1912), chap. 232.

[18] Wis. L. (1917), chap. 106, § 1.

[19] Moir, *opus cit.,* p. 49.

[20] Ore. L. (1911), chap. 173. This was interpreted as follows by the Insurance Commissioner in a ruling dated April 9, 1913. "Life insurance policies shall contain no provisions or supplemental contracts covering indemnity or benefits for accidental injuries or illness, except that such provi-

From a practical standpoint, accident and health companies in some ways are better qualified to write this coverage. They can offer complete coverage; they have had more experience in underwriting and have developed better organizations for investigation and for contesting fraudulent claims.[22] Then too, in the great majority of cases the policies may be cancelled, and since they are written usually for a term of one year, the company may refuse a risk where the experience has been bad. Most of the above factors are important because of the element of moral hazard. Disability claims become heavier in times of business depression and unemployment. In 1923, the Southern Industrial Insurers Conference stated:[23]

> We are almost forced to the conclusion that accident and health companies have more to fear from a panic or business depression, than they have from an epidemic of influenza, dengue fever or smallpox. If your old friend, Diogenes, is searching among our policyholders or the doctors who fill out claim blanks, his light will continue to burn. The problem of fake claims remains unsolved, . . .

It must not be supposed that life companies are entirely at a disadvantage. While it does not follow that a good life risk is also a good disability risk,[24] nevertheless the barrier of a medical examination is distinctly helpful. Of importance, too, from the standpoint of

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sions as are intended to safeguard such insurance against lapse or forfeiture by reason of permanent disability of assured occasioned by accidental injury or illness may be incorporated in such policies." Quoted in Moir, *opus cit.,* p. 49.

[21] Finlayson, G. D., "Present Day Tendencies in Insurance," ***P. I. I. T.*** (1918-19), vol. 20, p. 36.

[22] "Important as the disability benefit is on a life policy, it remains secondary to the life insurance protection and is handled by life companies as a secondary consideration. There are many companies today who, with one or two underwriting rules to mark exception, grant disability coverage when they give life insurance at standard rates. In short, they underwrite disability as they underwrite life. More bluntly, they do not underwrite disability, they concede it." Dingman, *opus cit.,* p. 279.

[23] Quoted *ibid.,* p. 274.

[24] A man may be an excellent life risk and a poor disability risk. "There are three very important considerations in connection with disability insurance: occupation, previous health or accident record and present earnings. While these all affect a man's eligibility for life insurance, they must be

moral hazard is the fact that the insured must pay a substantial life insurance premium and must wait a long time before disability benefits are paid.[25] The influence of the life insurance background on the disability clause is found in the broad grouping of risks without occupational differentiation, in the determination of the premium rates according to age, and in the permanency and incontestability of the contract.[26]

Objections.

Various objections have been voiced as to the necessity or desirability of including a disability clause in a life insurance contract.[27] Those more commonly advanced may be stated as follows:

(1) The clause has no place in life insurance because it is a separate risk and should be carried by a company organized for that specific purpose.

(2) The risk is small, and when it occurs the period between disability and death is short, having been estimated by one writer to be a little less than one and one-half years.[28]

(3) There is no need of such a clause, since separate coverage may be secured.

(4) The clause is open to misrepresentation on the part of agents.

(5) It is difficult to frame a satisfactory definition of disability.

(6) It is speculative and dangerous because of the lack of adequate experience on which to base rates and maintain reserves.

(7) The coverage is incomplete and leaves the insured unprotected against the losses arising out of temporary and/or partial disabilities which are vastly more common.

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viewed differently with respect to disability insurance. A violin player might be an excellent risk for life insurance, as far as his occupation is concerned but the loss of a single finger would entirely destroy his earning capacity as a violinist." Rhodes, *opus cit.*, p. 178. See also Beckett, W. W., and Mac Ewen, D. C., "Disability Insurance," *P. A. L. I. M. D.* (1928), vol. 14, pp. 17-33.

[25] Dingman, *opus cit.*, p. 280.

[26] Craig, J. D., "Disability Benefit in Life Policies," *P. A. L. I. M. D.* (1923-24), vol. 11, p. 298.

[27] Knight, C. K., *Advanced Life Insurance*, John Wiley & Sons, N. Y. (1926), pp. 256-259.

[28] Mudgett, B. D., "Disability Insurance," in Huebner, S. S., *Life Insurance*, Appleton, N. Y. (1928), p. 299.

The first objection, while theoretically correct, overlooks the fact that disability insurance is vital in most cases in keeping the life insurance in force in case of total and permanent disability. Then, too, since most accident and health policies are of one-year duration, when the risk becomes great by reason of disease or advancing age it may be terminated, thus depriving the insured of permanent protection. The second objection really constitutes an argument for the inclusion of the clause, since on the average the cost would be low and it would prove of inestimable value in those exceptional cases where disability continues for a long period of time.

A review of these objections reveals that many of them apply as well to accident and health companies which presumably are justified in writing this coverage. There is no doubt that the inclusion of the clause in the life contract has given to a large number of policyholders protection which they would lack were it necessary to purchase a separate contract. While the coverage is incomplete and therefore open to objections, nevertheless it makes provision for the most serious of the various disabilities, *viz.,* that which is total and permanent. In addition, it prevents the lapsing of the life policy and the loss of insurance.

Definition of Disability.

The hazard insured against is that of total and permanent disability. The meaning of "totality" and "permanency" has been before many courts and has constituted a problem most difficult of solution. Although the wording of the various clauses is not uniform the following provision is typical. The insured is disabled within the meaning of the clause when he "has become wholly and permanently disabled so that he is and will be permanently, continuously and wholly prevented thereby from performing any work or engaging in any occupation for compensation or profit." [29] Many companies stipulate that the insured must be disabled as a result of disease or of bodily injury.[30] The majority of the companies stipulate that "the entire and irrecoverable loss of the sight of both eyes, or the use of both hands or both feet or one hand and one foot, will be considered total disability."[31] While this removes any element of doubt as to totality, the great majority of disabilities are not included in this category.

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[29] *Flitcraft Manual* (1929), p. 429.

[30] See, for example, Appendix X, Section 3.

1. *Totality.*

An analysis of the definition indicates that the insured in order to receive payment must be unable to pursue *any* occupation.[32] A strict interpretation would limit the payment of benefits only to those who are entirely helpless. Ability to perform any occupation, however menial or unremunerative, would preclude any payment. Fortunately for the insured, both the companies and the courts, in accordance with the well-established principle of granting to the insured the benefit of any doubt, have in most cases given a liberal interpretation to the narrow definition.[33]

A few of the state courts have interpreted the words *any occupation* to mean just that. The principle has been stated as follows:[34]

> The authorities are practically unanimous that under the terms of this policy plaintiff cannot recover without showing a bodily injury that will incapacitate him, not only from following his usual avocation of fireman, but also from pursuing any other gainful occupation. The language is too plain, and the meaning too unmistakable, to permit an enlargement of the terms of the contract by construction. It is unfortunate for the plaintiff, but, "it is so nominated in the bond."

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[31] *Ibid.*

[32] Broader coverage is available under some accident and health policies, where inability to pursue the duties of one's *own* occupation constitutes total disability *within the meaning of the policy.* It may be added that the United States War Risk Insurance Bureau has a liberal definition of total disability, *viz.,* "impairment of mind or body which makes it impossible for the insured to engage in a substantially gainful occupation."

[33] The early cases, in which the general principles were formulated, were concerned with accident and health policies, rather than with the disability clause in life insurance contracts. In the first case to come before the courts a liberal attitude was shown and a reasonable construction was put on the language used. See Hooper *v.* The Accidental Death Insurance Company (1860), 5 H. & N. (*Eng.*), 546, 557. For a review of the early cases see Hobbs, M. C., "Total Disability in Accident Insurance" (1890-91), 4 *Harv. L. R.* 176. The weight of authority, though slight, seems to have been with Saveland *v.* The Fidelity and Casualty Company of N. Y. (1886), 67 *Wis.* 174, which stated that the courts were powerless to enlarge the risks of the company. For a comprehensive discussion see Strong, W. M., "Disability Benefits—The Contract and the Courts," *T. A. S. A.* (1926), vol. 26, pp. 375-442.

[34] Buckner *v.* Jefferson Standard Life Ins. Co. (1916, *N. C.* Sup. Ct.), 90 S. E. 897. See also Parten, adm'r., *v.* Jefferson Standard Life Ins. Co. (1923), 30 *Ga.* App. 245; Lee *v.* New York Life Ins. Co. (1924), 188 *N. C.* 538.

On the other hand the courts in a few other states have in effect nullified the contract in their efforts to protect the insured. They have interpreted *any occupation* to mean *own occupation.* The philosophy underlying such decisions has been stated by Justice Broaddus:[35]

> But we are unwilling to adopt such a doctrine, the effect of which would be, practically, to reduce all such contracts to nullities and to make them the instruments of exacting dues from policy holders without creating any liability on the part of the insurers. Common knowledge of the occupations in the lives of men and women teach us that there is scarcely any kind of disability that prevents them from following some vocation or other, except in cases of complete mental inertia. We have examples of persons without hearing and without sight following a vocation—some without feet, and some without hands, engaged in business. The achievements of disabled persons are seemingly marvelous. Under defendant's theory, the plaintiff might embark in the peanut trade or follow the business of selling shoe-strings or lead pencils, or follow some similar calling, in which instances, under the rule invoked, there would be no disability within the meaning of the policy. In our opinion, such was not within the contemplation of the parties.
>
> . . . .
>
> We therefore hold the contract to mean, not that the assured was rendered absolutely and literally unable to perform any part of his occupation, but that he was disabled from performing substantially the occupation stated in the policy.
>
> . . . .
>
> Total disability exists, although the insured is able to perform a few occasional acts, if he is unable to do any substantial portion of the work connected with his occupation.

In the majority of states, however, *any occupation* has been held to mean that the insured must be disabled so as to be prevented from following his own occupation or such other occupation as he is fitted for by ability or training. The following quotation from a recent decision is indicative of the liberal viewpoint:[36]

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[35] Foglesong *v.* Modern Brotherhood of America (1906), 121 *Mo.* App. 548, 552. See also Industrial Mutual Indemnity Co. *v.* Hawkins (1910), 94 *Ark.* 417; Aetna Life Insurance Co. *v.* Phifer (1923), 160 *Ark.* 98; Jacobs *v.* Loyal Protective Insurance Co. (1923), 97 *Vt.* 516.

[36] Storwick *v.* Reliance Life Ins. Co. (1929), 151 *Wash.* 153, 157. See pp. 161, 162 for additional citations upholding liberal view.

> To what extent an insured, under policies such as these, must be disabled in order to be considered as totally disabled, entitling him to the benefits of the insurance, has been a much litigated matter in the courts of this country. Some few courts have seemed to go to the extreme of holding to the literal meaning of the total disability clauses in such policies. It seems to us, as it apparently has to a majority of the courts of the United States, that such extreme holding to literal construction has not been in keeping with the real intent of the parties to such insurance contracts. Total disability it seems to us, is largely a relative question for determination. . . . . . Under such disability clauses, we think the question of total disability should be determined in the light of the capabilities and training of the insured, especially where his capabilities and training are evidenced in the contract of insurance, as here.
>
> It seems to us that one is totally disabled, within the meaning of these policies, when he is so far disabled that he cannot, with any degree of success, within the range of his normal capabilities, earn wages or profit in some occupation or gainful pursuit.

At the present time the definition in the policy is at variance with its meaning, thus leaving the insured in doubt as to its real provision.[37] It has been urged by at least one company that if some definite measuring rod of totality could be established, much confusion would be eliminated. Some such clause as the following has been suggested:[38]

> The Insured will be regarded as totally disabled when, by reason of accidental bodily injury or by sickness, his average monthly earned income for a period of four months has not exceeded one-fourth of his former earned income (averaged monthly for the twelve months immediately preceding such four months).

2. *Permanency.*

Obviously, a permanent disability is one that continues for life. But many apparently permanent disabilities are cured. Since it is impractical to defer payment until the question of permanency is settled by death, companies start the payment of claims when permanency seems likely. In one case it was held that permanent disability really means presumably permanent disability,[39] while in another the court stated that "the word 'permanent' does not always mean forever or lasting forever. The meaning of that word is to be construed according to its nature and in its relation to the subject-matter of the contract." [40] In practice, the question is of minor importance, since the companies specify that total disability which has been continuous for a period (from four to twelve months) stated in the provision shall be presumed permanent.

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[37] *P. N. C. I. C.* (1929), vol. 60, p. 129. As stated by Mr. E. E. Rhodes: "The point I am trying to make is that the insured and his beneficiaries should not be in the position of having to accept contracts in reliance upon the good intentions of a company rather than upon the terms of the contract. Nor should life insurance officials be put in the position of having to depart from the terms of the contracts issued by their companies."

[38] *Ibid.,* p. 131. For a discussion of this clause, see The Pelican, *opus cit.*

Benefits.

During its development the clause has undergone many changes. Throughout the first twenty years the benefits granted took one of two forms: one provided for the waiver of premiums and the maintenance of the insurance, and the other provided for the maturing of the policy and the payment of cash, or a fixed number of installments, or a life annuity.[41] In 1915, a prominent company provided, in addition to the waiver of premiums, a life annuity to the insured of $100 per year for each one thousand dollars of insurance.[42] The need of some income during the disabled person's lifetime was thus recognized. Further, upon his death the face of the policy was payable without diminution.

At the present time the usual benefit consists of waiver of premium and payment of an annuity of ten dollars per month per thousand dollars of insurance, with the first monthly payment of ten dollars at the end of four months of continuous total disability, provided disability occurs before age sixty. While the additional premium required increases with age and varies with the type of policy and the company, for purposes of illustration the following rates may be quoted. The purchaser of an ordinary life policy at age thirty-five may refuse to cover the hazard; he may secure premium waiver for 85 cents per thousand dollars of insurance; or he may secure both premium waiver and a monthly income of one per cent of the policy face for $5.24 per thousand dollars of insurance.[43]

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[39] Federal Life Ins. Co. *v.* Lewis (1919; *Okla.* Sup. Ct.), 183 Pac. 975.

[40] Penn Mutual Life Ins. Co. *v.* Milton (1925), 160 *Ga.* 168, 172.

[41] Mudgett (Huebner), *opus cit.,* p. 307.

[42] *Ibid.,* p. 309; Morris, E. B., "The Permanent Total Disability Provision in Life Insurance Policies; *Proc. Cas. Act. Soc.* (1928-29), vol. 15, p. 11; *Chronicles of The Penn Mutual Life Insurance Company,* Phila. (1922), p. 93.

According to the terms of the present standard clause, no income payments shall be made for any part of the first three months of total disability, or for any fractional part of a month thereafter. Upon recovery of the insured from total disability, payments cease and premiums becoming due thereafter must again be paid by him.[44]

Since the disability clause is in the nature of a supplementary contract, the reserve on the life policy itself is not affected by any payments made. Any dividends which would otherwise have become payable during disability are allowed as though the disability had not occurred.[45] It is the general practice, however, not to grant a surrender value on the disability contract in case of cancellation.[46]

Risks Not Covered.

It is the practice of many companies to refuse to issue the disability clause to holders of term policies, to women, and to sub-standard risks. Term insurance presents three problems: that of adverse selection leading to heavier losses, that of renewal, and that of conversion. Some companies exclude women without exception, while others exclude only married women and women not gainfully employed. Sub-standard lives are probably subject to a higher rate of disability than standard risks because of incipient disease, physical impairment, or hazardous occupation. Disability coverage is therefore withheld entirely or restricted.[47]

In addition to the above, certain exclusions are found which limit coverage with respect to all purchasers of the contract. While many companies write the clause without any restrictions, the majority exclude disability resulting from certain causes. The more common of these are those relating to military or naval service in time of war, and self-inflicted injuries. Fewer companies stipulate the benefits will not be paid if disability arises out of aerial or submarine activities, or out of violation of law.[48]

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[43] *Best's Illustrations* (Sept., 1930), p. 746.

[44] *P. N. C. I. C.* (1929), vol. 60, pp. 122, 123.

[45] *Ibid.*, p. 122.

[46] The Pelican, *opus cit.*, p. 177.

[47] Knight, *opus cit.*, pp. 247, 248; Mudgett (Huebner), *opus cit.*, pp. 302-304.

[48] Morris, *opus cit.*, p. 14.

Age and Time Limits.

The disability clause with certain exceptions covers disability occurring prior to age sixty.[49] This means that payments to the insured will be continued if he has become disabled prior to age sixty, but disability occurring subsequently is not covered. Such a provision is quite desirable, since the cost of coverage subsequent to age sixty would be high. Furthermore, the productive period, during which provision for old age should have been made, is over. The purpose of the disability clause is to guarantee the permanence of the individual's insurance and to provide an income in case of disablement; it is not a provision for old age.

Standardization.

The experience of the life companies with their disability business has been unsatisfactory. Most of them have lost money.[50] Furthermore, the clauses have been characterized by a lack of uniformity, both with respect to their wording and to the exclusions contained therein. In an effort to improve the situation the Superintendent of Insurance of New York, in March, 1928, appointed a committee of five company actuaries to draft disability provisions which might become standard. The following resolution was offered December 11, 1928, and referred to the Committee on Laws and Legislation of the National Convention of Insurance Commissioners.[51]

> *Resolved,* That present condition resulting from the writing of disability benefits by life insurance companies are such as to require immediate action by the National Convention of Insurance Commissioners. Competition has been the sole agent in the development of the disability benefit from a relatively unimportant position in the life insurance contract to one which overshadows the principal benefit itself. The addition of the so-called 90 Day Clause has destroyed the significance of total and permanent disability. As a result temporary disabilities of very limited periods are now covered and life companies are largely engaged in the writing of non-cancellable health and accident benefits. Large and persistent losses in Surplus are being experienced, a condition which Insurance Commissioners will soon be asked to explain particularly in the case of mutual companies. The dating back of

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[49] *P. N. C. I. C.* (1929), vol. 60, p. 123.

[50] Beckett and Mac Ewen, *opus cit.,* p. 42.

[51] *P. N. C. I. C.* (1929), vol. 60, pp. 7, 8.

> claims and the diversity of practise in handling the disability benefit by different companies has made it impossible to establish a sound actuarial basis for the calculation of adequate premiums and reserves. Moreover, an increase in rates for a fundamentally unsound underwriting proposition can be no cure for the situation inasmuch as experience in such cases shows that the claim rate rises faster than the corresponding increase in premiums. Where increases in premiums have been made companies have granted other concessions that have nullified the value of the increase in rates. Under similar conditions the Convention has never been able to find a proper basis for the calculation of premiums and reserves by accident and health companies writing non-cancellable policies. The situation as regards disability benefits, if allowed to continue, will have the same unsatisfactory result. We believe that both of these problems could be solved by the Convention in prescribing a uniform benefit clause, or some standard provisions under which the benefits may be written. Many of the life companies have given this matter serious consideration, and we believe that a majority of these companies would welcome the necessity of the adoption of a uniform clause based upon conservative lines. The adoption of such a clause would develop a disability experience that could be used as a safe guide for the future.

On September 18, 1929, a joint committee representing the commissioners and the companies submitted a report which was adopted. The report contained recommendations which were in the form of standard provisions under three general classifications: prescribed, permitted and prohibited.[52] As a result of this action, present-day clauses are fairly uniform in nature, although some variation exists because of the use of "permitted" clauses.

The committee believed that the adoption of the standard provisions will have among others the following results: [53]

> (1) Elimination of the "professional man's policy," as the proposed provisions do not permit payment of benefits when the insured is unable to perform the duties merely of his customary occupation.
>
> (2) Exclusion of the payment of any disability benefit for the first three months of disability—the maximum allowance permitting benefits to accrue after three months with the first payment at the end of four months if disability has continued so long.
>
> (3) Exclusion of any increasing disability benefit such as an increase of 50 per cent after five years and 100 per cent after ten years.

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[52] *Ibid.,* pp. 118-120. For the detailed recommendations see Appendix XVII.

[53] *Ibid.,* pp. 120, 121.

(4) Prohibition of retroactive income payments for more than one year on delayed claims.

(5) Requirement of retroactive waiver of premium for at least six months on delayed claims.

(6) Requirement of recognition within certain limits of disability occurring within the grace period.

(7) Exclusion of any disability benefit where disability occurs after age sixty except in certain endowments and deferred annuities.

(8) Exclusion of disability claims when notice of claim is not submitted prior to death and prior to termination of disability.

(9) Exclusion of benefits for partial disability.

Present Status.

Since the writing of this thesis the disability clause has again become the center of much discussion. The officials of many companies are in favor of its abolition, at least insofar as the monthly income is concerned. This is the view held by at least one insurance commissioner.[54] At the present time, while many companies have retained only the provision for premium waiver, others grant in addition a modified clause paying five dollars per month per thousand dollars of insurance. The waiting period is increased to six months, and the coverage terminates at age fifty-five.[55]

The Double Indemnity Clause

The double indemnity clause in life insurance contracts provides for the payment of twice the face value of the policy in case of death caused by accidental means.[56] This coverage is popular, probably because of the smallness of the premium compared with the size of the benefit.[57] Whether it has a proper place in the life insurance contract has been questioned.[58] Logically, it would be more appropriate to pay double indemnity in case of death as the result of a disease such as tuberculosis or cancer, rather than in case of death by accident, since the former is preceded by a lingering illness.[59] The objection to the clause is that it pays only in case of death as a result of certain causes. Irrespective of the cause of death, the economic loss is the same and should be provided for under all conditions. However, "very few men are over-insured, and the Double Indemnity Benefit provides additional partial insurance at very small cost."[60] Where a young, healthy man has several dependents and is as yet unable to carry a substantial amount of life insurance, the double indemnity clause may be desirable, since premature death is more likely to result from accident than from disease.[61] Economically, life insurance companies enjoy certain advantages in writing the clause in that there is a saving in medical, inspection, and acquisition costs, and the purchase, at the same time, of a substantial amount of life insurance tends to eliminate the moral hazard.[62] Actuarially, reasonable and adequate rates are not difficult to obtain. As a matter of fact, the clause is more closely related to the main contract than is the one granting disability coverage.[63]

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[54] "It is for the companies to say whether they are willing to forego a certain portion of their business, carrying a substantial premium income—business which, however, up to the present time has not paid its own way—in order to stop unnecessary losses, reduce controversies, misunderstandings, litigation, and in order to re-establish life insurance in the minds of the public as the most stable and the most dependable of American institutions." *The Weekly Underwriter* (1931), vol. 125, p. 555.

[55] Marshall, E. W., "The Dubious Position of the Disability Income Provision in Life Insurance Contracts," *Ann. Am. Acad. Pol. & Soc. Sci.* (1932), vol. 161, p. 48.

[56] The choice of the name is unfortunate since it is not a contract of indemnity and does not necessarily provide for double the face of the policy. Jackson, H. H., "Double Indemnity in Life Insurance Policies," *Proc. Cas. Act. Soc.* (1929-30), vol. 16, p. 94.

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[57] The rates vary with companies and sometimes with policies and age, but on the average may be said to be about $1.25 per thousand dollars annually for the premium-paying period or until the coverage ceases. *Ibid.*, pp. 96-101.

[58] Arnold, H. B., "'Double Indemnity' or 'Accidental Death Benefit' Clauses," *P. A. L. I. C.* (1913-21), Paper 34, p. 1; Cleary, M. J., "New Features in Life Contracts," *P. N. C. I. C.* (1917), vol. 48, p. 222; Maclean, J. B., *Life Insurance.* McGraw-Hill Book Co., Inc., N. Y., 2d Ed. (1929), p. 323.

[59] "It would seem just as reasonable to offer a number of similar alternatives under which, for appropriate extra premiums—any of which would be relatively small—double the face of the policy would be paid in event of death arising from a specified cause, to be selected in advance by the applicant, such as cancer or tuberculosis. Indeed, as death from accident is not preceded by an expensive illness, but may, on the contrary, result in some financial compensation to the representatives of the insured, accidental death might be regarded as the least appropriate reason for a double indemnity provision." Maclean, *opus cit.*, pp. 323, 324.

[60] Cole, C. E., "Casualty Benefits in Life Insurance Policies," *P. I. I. T.* (1923-24), vol. 25, p. 92.

[61] Jackson, *opus cit.*, p. 98.

[62] *Ibid.*

The clause was introduced by an American company in 1904, and for many years thereafter it was available in two forms.[64] One was merely a travel clause and promised payment if the insured met death as the result of an accident while traveling as a passenger on a common carrier.[65] This is no longer written, having been displaced by the broader clause covering accidents of all types.[66] The wording of the following insuring clause may be regarded as typical of present-day policies:[67]

> The Double Indemnity will be payable upon receipt of due proof that the Insured died as a direct result of bodily injury effected solely through external, violent, and accidental means, independently and exclusively of all other causes, and of which, except in the case of drowning or asphyxiation, there is evidence by a visible contusion or wound on the exterior of the body . . .

Accidental Death and Accidental Means.

In analyzing the double indemnity clause it is necessary to distinguish between "accidental death" and death effected through "accidental means."[68] The problem has been many times before the courts and their efforts to distinguish the two have resulted in much confusion.[69] In perhaps the great majority of cases the insured fails to realize that any distinction between the two exists. Some courts, therefore, have given to "accidental means" the force of "accidental death" in order to prevent a failure of the insurance because of a technicality.[70]

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[63] *Ibid.*, pp. 98, 99. ". . . though disability is the more defensible adjunct from the point of view of the economist, from that of the actuary it is the less so in that Double Indemnity is based on the very event which constitutes the major claim and that, in sharp contrast to disability, both are distinctly not contracts of indemnity." For an analysis of the causes of death see Hunter, Arthur, "The Accidental Death Feature in Life Insurance Policies," *T. A. S. A.* (1925), vol. 26, p. 37.

[64] The company was the Fidelity Mutual and the clause read as follows: "In the case of death being caused by bodily injury of the insured effected exclusively by external, violent and accidental means, and occurring within 90 days of the event causing the injury, double the sum of insurance will be paid." Jackson, *opus cit.*, p. 110.

[65] Hutcheson, W. A., "Note on Double Indemnity Clauses in Life Insurance Contracts," *T. A. S. A.* (1918), vol. 19, p. 80.

[66] Jackson, *opus cit.*, p. 111.

[67] Appendix X.

[68] Especially among accident and health policies a great variety of insuring clauses exist and care must be exercised to secure the desired coverage.

[69] Bullitt, W. M., "Accidental Means," *P. A. L. I. C.* (1925-27), pp. 1, 2. The reader is referred to this address for a detailed discussion.

A clause insuring against "accidental death" is much broader and consequently better for the insured. A *result* (death, for example) may be accidental, although it proceeded from an intentional course of conduct. Whether the *act* which preceded the *result* is intentional is of slight importance. The test is whether or not the *result* is unusual. Thus, the insurer is bound under the term "accidental death," "if the act preceding the injury, though intentional, produces something unforeseen, unexpected, and unusual." [71]

In interpreting "accidental means" it is necessary to look to the *means* rather than to the *result.* Before the company can be held liable there must be an element of unexpectedness in the *means.* The words "accidental means" "do not mean simply that death shall be accidental; that is, unintended, or unexpected, or unforeseen; but that the means or the cause of death shall be accidental." [72] The principle was stated in the leading case of United States Mutual Accident Association *v.* Barry.[73] B. and two other persons jumped from a platform, four or five feet high, to the ground, they jumping

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[70] *Ibid.,* p. 3.

[71] Francis *v.* International Travelers' Ass'n (1924; *Tex.* Civ. App.), 260 S. W. 938, 939. "Where infection, blood poisoning, and death, resulting from the pulling of a tooth by a dentist, was unusual, the death was accidental, . . ."

[72] Maryland Casualty Co. *v.* Spitz (1917; C. C. A. 3), 246 *F.* 817, 818. A. rubbed a boil on his neck with soiled hands for the purpose of relieving itchiness. He broke the scab and died as a result of erysipelas. The court held that the breaking of the scab was a probable result and one reasonably to be expected from his intentional act. The company was not liable.

[73] (1889), 131 *U. S.* 100, 121. The case of Caldwell *v.* Travelers Insurance Company (1924), 305 *Mo.* 619, contains an excellent review of cases dealing with accidental means and accidental death. The old ruling of Missouri was overturned and the court adopted the view of the Barry case. As stated by Justice Blair, pp. 625, 626: "There are two clearly defined lines of cases on this question. One holds that, where an unusual or unexpected result occurs by reason of the doing by insured of an intentional act, where no mischance, slip or mishap occurs in doing the act itself the ensuing injury or death is not caused through accidental means; that it must appear that the means used was accidental, and it is not enough that the result may be unusual, unexpected or unforeseen.

"The other line of cases holds that where injury or death is the unusual, unexpected or unforeseen result of an intentional act, such injury or death is safely and he jumping last. The jar produced a stricture of the duodenum from the effects of which death ensued. Mr. Justice Blatchford delivered the opinion of the court, in part, as follows:

> It is further urged that there was no evidence to support the verdict because no accident was shown. We do not concur in this view. The two companions of the deceased jumped from the same platform, at the same time and place, and alighted safely. It must be presumed not only that the deceased intended to alight safely, but thought that he would. The jury were, on all the evidence, at liberty to say that it was an accident that he did not. The court properly instructed them that the jumping off the platform was the means by which the injury, if any was sustained, was caused; that the question was, whether there was anything accidental, unforeseen, involuntary, unexpected, in the act of jumping, from the time the deceased left the platform until he alighted on the ground; that the term "accidental" was used in the policy in its ordinary, popular sense, as meaning "happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected;" that, if a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means; but that if, in the act which precedes the injury, something unforeseen, unexpected, unusual occurs which produces the injury, then the injury has resulted through accidental means.

For purposes of illustration a few cases may be cited. The company was held not liable in the following cases: the insured committed an assault and battery on a person who made no resistance and in striking such person in the face he injured his hand and died of blood poisoning;[74] the insured had a tooth pulled and died as a result of blood poisoning;[75] the insured took a cold shower which caused dilation of the heart;[76] the insured cranked his car which caused dilation of the heart;[77] the insured was ruptured while lifting a heavy

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by accidental means, even though there is no proof of mishap, mischance, slip or anything out of the ordinary in the act or event which caused such injury or death."

The first rule is commonly accepted; the second "seems largely to be built upon a misconception of" the Barry case. *Ibid.*, p. 659.

[74] Fidelity and Casualty Co. of N. Y. *v.* Slacey's Ex'rs. (1906; C. C. A. 4), 143 *F.* 271.

[75] Ramsey *v.* Fidelity and Casualty Co. (1919), 143 *Tenn.* 42. Compare *supra*, note 71.

[76] The New Amsterdam Casualty Co. *v.* Johnson, Admx. (1914), 91 *Ohio* St. 155.

[77] Carswell *v.* Railway Mail Ass'n (1925; C. C. A. 5), 8 *F.* (2d), 612.

mail sack in the customary manner;[78] the insured ruptured his heart while carrying a heavy door;[79] the insured attempted to eject a drunken man and died of a dilated heart.[80]

The company was held liable in the following cases: the insured slipped and fell while cranking the motor of an automobile;[81] while administering medicine to himself with an hypodermic needle, the insured's carriage suddenly started, causing him to insert the needle deeper into his leg than he intended;[82] the insured cut his lip while shaving;[83] the insured ate what he supposed to be edible mushrooms;[84] the insured was hanged by a mob.[85]

In his admirable address, Mr. Bullitt has thus epitomized the law and stated the general rules:[86]

> First. An unexpected, unusual and unintended *Result* does not impose liability under a policy which requires that the *means* or cause be accidental. The company is not liable.
>
> Second. If death occurs as the result of an *intentional* act, engaged in with a full knowledge of all the material facts in the situation, and executed as planned, such a death is *not* caused through "accidental means," regardless of whether or not the death, when viewed as a *Result,* was unintended, unexpected, unusual or unforeseen. The company is not liable.

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[78] Fane *v.* National Ass'n Railway Mail Clerks (1921), 188 *N. Y.* S. 222.

[79] Shanberg *v.* Fidelity and Casualty Co. of N. Y. (1907; C. C. A. 8), 158 *F.* 1, 5. "It would not help the matter to call the injury itself—that is, the rupture of the heart—an accident. That was the result, and not the means through which it was effected. Carrying the door, or, after putting it down, the act of filling his lungs with air by drawing a deep breath, was the means by which the injury was caused. Both were done by the assured voluntarily, and in an ordinary way with no unforeseen, accidental, or involuntary movement of the body whatever."

[80] Scarr *v.* General Accident Assurance Corp. (1904), 74 L. J. K. B. (*Eng.*), 237. For a review of some of the English cases see Fenton *v.* Thorley & Co., Ltd. [1903], A. C. (*Eng.*), 443, upheld in Brintons, Limited *v.* Turvey [1905], A. C. (*Eng.*) 230.

[81] Preferred Accident Ins. Co. *v.* Patterson (1914; C. C. A. 3), 213 *F.* 595. "We agree that, when a man is injured while doing merely what he intends to do, he is not injured by an accident, unless the course of his action has been interrupted or deflected by some unforeseen and unintended happening."

[82] Bailey *v.* Interstate Casualty Co. of N. Y. (1896), 40 *N. Y.* S. 513, affirmed (1899), 158 *N. Y.* 723.

[83] National Life and Accident Ins. Co. *v.* Singleton (1915), 193 *Ala.* 84.

[84] United States Casualty Co. *v.* Griffis (1916), 186 *Ind.* 126.

[85] Fidelity and Casualty Co. *v.* Johnson (1894), 72 *Miss.* 333. But death at the hands of the law is not an accident. Diamond et al *v.* New York Life Ins. Co. (1930; Dist. Ct. N. D. Ill. E. D.), 42 *F.* (2d), 910.

[86] Bullitt, *opus cit.,* p. 38.

Third. Even though the means employed *are intentional,* if they are *not* executed in the manner planned, because some slip or mishap occurred in the process, and if the deflection caused by such fortuitous occurrence occasioned the injury, the *means* are accidental. The company is liable.

Fourth. Even though the act *is* intentional, and is executed *exactly as planned,* if the actor was *ignorant* of some fact in the situation, which had he known of it would have caused him to act differently, or to refrain from the act altogether, and which was material, in that but for its existence the injury would not have resulted from the act, the means is accidental. The company is liable.

Fifth. Of course, if the force is applied *without* the Insured's consent, the company is liable.

External and Violent.

The terms "external" and "violent" have been interpreted very liberally by the courts and have exercised relatively little influence upon the construction given to the term "accidental cause or injury." "The term 'external' applies to the force, and not to the injury." [87] The term "violent" "means merely that the cause is efficient in producing a harmful result. It is not necessary that it shall be violent in the sense of breaking tissues or otherwise physically and visibly affecting the body." [88] Thus, the inhaling of illuminating gas has been held to be both external and violent.[89] So, too, the word "visible" has been given a broad meaning by the courts, as is evidenced by the following charge to the jury: [90]

> Visible signs of injury, within the meaning of this policy, are not to be confined to broken limbs or bruises on the surface of the body. There may be other external indications or evidences which are visible signs of internal injury. Complaint of pain is not a visible sign, because pain you cannot see; complaint of internal soreness is not such a sign, for that you cannot see; but if the internal injury produces, for example, a pale and sickly look in the face, if it causes vomiting and retching, or bloody and unnatural discharges from the bowels; if, in short, it sends forth, to the observation of the eye, in the struggle of nature, any signs of the injury,—then those are external and visible signs, provided they are the direct results of the injury.

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[87] Vance, W. R., *Handbook of the Law of Insurance,* 2d Ed., West Pub. Co., St. Paul (1930), p. 879.

[88] *Ibid.,* p. 880.

[89] Paul *v.* Travelers Insurance Co. (1889), 112 *N. Y.* 472.

[90] Barry *v.* United States Mutual Accident Ass'n (1885; Cir. Ct., E. D. Wis.), 23 *F.* 712, 715.

Independently and Exclusively of All Other Causes.

The effect of the above words is to relieve the company of liability where disease, or bodily or mental infirmity contribute toward death. Thus, no liability exists if a trivial accident hastens the death of a person already seriously ill, or if the injury is not the sole cause of death, or if the accident contributes with the pre-existing disease as one of the causes of death.[91] The principle has been stated as follows:[92]

> The language used in the policy before us, by limiting liability to cases of death, wherein such death is caused by accident directly and independently of all other causes, just as certainly and effectively excludes liability in a case wherein the accident co-operates with pre-existing disease or bodily infirmity, as it would if the latter words were set out in the policy.

But where the accidental injury results in a disease which causes death, or where it is sufficiently severe to cause death independently of an incurable disease, the company is liable.[93] It should be noted that the words "disease" or "bodily infirmity" "are ordinarily construed to mean serious derangements of the bodily organs or functions, and not mere temporary disorders."[94]

Exceptions.

In addition to the limitations imposed by the insuring clause, exceptions of various kinds are included in the policy. The following are the ones most commonly found.[95] Double indemnity is not paid: (1) Where death has not resulted within a definite period, usually ninety days, from the time of the accident; (2) Where the insured has reached a certain age, usually sixty; (3) Where death is the result of suicide, sane or insane; (4) Where death results from poison, taken voluntarily or otherwise; (5) In case of violation of law by the insured; (6) Where death is the result of war, riot, or insurrection; (7) When the insured engages in aviation or submarine activities; (8) Where the insured engages in military or naval service in time of war; (9) Where death results from contusionless injury or from infection.

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[91] Commercial Travelers' Mut. Acc. Ass'n of America *v.* Fulton (1897; C. C. A. 2), 79 *F.* 423; Smith *v.* Federal Life Ins. Co. (1925; Dist. Ct. N. D.), 6 *F.* (2d), 283.

[92] Kerns *v.* Aetna Life Ins. Co. (1923; C. C. A. 8), 291 *F.* 289, 292.

[93] McCarthy *v.* Travelers Ins. Co. (1878; Cir. Ct. E. D. Wis.), 15 *Fed.* Cas. 8682, p. 1257.

[94] Vance, *opus cit.,* p. 893.

[95] For a detailed analysis, see Jackson, *opus cit.,* pp. 113, 115.

Fewer companies exclude death as a result of inhaling gas; murder; police duty; sunstroke; intoxication; and travel outside of the United States or Canada.

Termination.

The clause may be terminated in a number of ways. For example, when the age limit is reached, when premiums are no longer paid, or when the original policy is surrendered. The coverage is also discontinued when disability benefits are paid, when paid-up or extended term insurance is in force, or in case of military service, travel abroad, or aviation.[96]

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[96] *Ibid.,* p. 116.

Chapter XIII

Conclusion

A comparison of the contract as it is at present constituted, with that which was first offered to the purchaser of life insurance, indicates beyond all question that the policyholder has benefited in a great variety of ways. With a clearer understanding of the principles governing the conduct of the business, and its evolution to conform to different economic conditions, it was inevitable that profound changes in the policy should appear. When life insurance was written primarily for short-time protection the contract was not inequitable. At that time the agreement was usually the result of bargaining, and the insured was on an equal footing with the underwriter. As a matter of fact, the development of certain legal doctrines, such as those of concealment, misrepresentation, and warranties, was influenced by the realization on the part of the courts that the insured's position was superior to that of the underwriter and that the former should be penalized by a forfeiture of his insurance if he withheld or misstated material facts. The application of these rules, developed principally in connection with marine insurance, to life insurance, where the relationship of the parties soon became essentially different, resulted in grave injustice to the policyholder. This was particularly true when the contract was applied to protection for the whole of life at a level rate of premium. Forfeiture arising either out of failure to continue the payment of premiums, or out of a violation of the numerous conditions of the policy resulted in a loss of a reserve fund which equitably belonged to the insured. Then, too, as the life offices gained experience and perfected their organization the contract became less and less one of bargain, and was transformed into one of adhesion. The introduction of an agency system resulted in the sale of policies to members of the community who were unfamiliar with business practices. Their inability to analyze a detailed contract, particularly one involving so technical a subject as life insurance, left them dependent upon information given them by the agents of the company, frequently with disastrous results. For this reason the courts modified certain of the common law rules, and legislatures passed statutes for the purpose of eliminating these inequities. Then again, the companies themselves, both because of a sense of fairness and a desire to promote the use of life insurance by building up good will, were instrumental in bringing about by means of competition many changes that improved the policyholder's position.

The early policies were comparatively short, most of their provisions being devoted to a recital of restrictions and conditions under which the insurance was forfeited. Sometimes the companies exercised great ingenuity in devising means of forfeiting the insurance on mere technicalities. Today the contract abounds in provisions which grant valuable benefits to the insured and every effort is made to provide a policy that will enable the insured to keep his insurance in force, or if it become necessary for him to discontinue his protection, to give to him as great a surrender value as is consistent with equity to the continuing members.

The numerous benefits now available under life insurance policies are the result of gradual additions or changes in legal interpretation made desirable by changing conditions. State legislation and the promulgation of regulations by the various insurance departments have materially improved the insured's status. Subsequent to the Armstrong Investigation many states prescribed certain clauses which must appear in all life contracts, and prohibited the inclusion of others. Because of competition among the companies these improved policies were made available to residents of states which had not enacted such requirements.

At one time the contract was held by the courts to be one of indemnity, but because of its more general use in business transactions many companies refused to take advantage of this rule, even before it was changed by the courts. The position of the insured has been greatly improved by the extreme liberality with which the courts have interpreted ambiguous terms of the policy, and in the weight which a majority of them have given to parol testimony showing the cconditions surrounding the formation of the contract.

Of tremendous importance have been the changes introduced with the view of keeping the contract in force, so that the intention of the insured in providing protection for his dependents should be realized. Such permanence is insured to the fullest possible extent by the requirement of notice in case of forfeiture, by the inclusion in the policy of a grace period, by the granting of extended term or paid-up insurance, by the right to borrow on the policy, or by a provision whereby the cash value is automatically used to pay premiums. Of great advantage, too, is the right to reinstate the policy, granted by many companies without limitation as to time, and by others for a period of three or five years. Again, through the judicious use of the dividend options the insured is enabled to increase the amount of his insurance, to cut short his premium-paying period, to hasten the maturity of his contract, or to build up a substantial cash fund, available in time of emergency. It is of the greatest importance that absolute certainty of payment be guaranteed in so far as this is possible. Any contingency, however remote, which may in future years work a forfeiture of the insurance, injects an element of speculation into the likelihood of payment, and may result in an expensive law suit at a time when the insured's dependents require funds, and when he is unable to present his testimony. This possibility has been considerably reduced by the enactment of statutes which modify or abolish the harsh doctrine of warranties as applied to life insurance, thus requiring, in effect, materiality of misstatement as a ground for forfeiture. The incontestable clause plays a significant part in further insuring the permanence of protection. After the lapse of a comparatively short period of time, the insured knows that neither misstatements nor omissions, nor even fraud in securing the contract will be used to deprive him or his dependents of the policy proceeds. Such a provision is extremely desirable, although a clause excluding fraud immediately upon issue of the policy is of doubtful value, since it imposes the burden of expensive investigation upon the company. Such clauses, however, are rarely used.

Restrictions have practically disappeared from the modern life policy. The insured, in effect, is provided with world-wide protection, leaving him free to reside or travel where he may, and to engage in any occupation that fancy dictates. No longer need he secure permission from the company for this privilege or pay the extra premium formerly imposed. Even those few companies which still impose some restrictions, provide for their elimination after the period of contestability has expired. Such freedom is in conformity with the greater safety of travel, the rapid progress made in the conquest of certain types of disease, and the desire of the companies to provide as broad a form of coverage as is consistent with the interests of the majority of their policyholders. Even with respect to the hazard of war, it is now generally recognized that a restriction is not necessary in policies issued during times of peace, and that such a requirement need be inserted only in time of war to prevent selection against the company. Formerly, death by suicide as a risk insured against was excluded throughout the entire life of the policy, but at the present time it is no longer a defense after the expiration of one or two years. Perhaps excessive liberality in this respect is detrimental. The recent increase in the number of suicides, particularly of policyholders carrying large amounts of insurance, raises the question of the wisdom of a one-year clause, and some of the companies have recently adopted the two-year period, as being more equitable to the majority of their policyholders. For a considerable length of time the companies were relieved by the terms of the contract of the necessity of paying claims arising out of death as the result of duelling, violation of law, and execution at the hands of justice. With respect to the latter, although there is a conflict of opinion and court decisions, the better view seems to be that such claims should be paid, since they benefit the community by providing for the proper maintenance of the dependent wife and children.

Great strides have also been made in liberalizing the provisions which are effective at the time of the termination of the contract. Where the contract is ended by death or by maturity, the claim is paid immediately upon due proof. Originally no thought was given by the company to the disposition of the funds after payment to the beneficiary, but at the present time there is available to the insured a choice of modes of settlement, so that if a lump sum settlement is not desirable he may elect to have the company administer the fund in the interests of the beneficiary. In this way the latter may be absolutely assured of a definite life income, with a guaranteed number of payments in any event to take care of minor children. The development of the insurance trust further affords a satisfactory means of administering the insurance estate where the latter is large and the element of discretion is deemed necessary. Where the insured can no longer continue his contract, or feels that because of changed conditions it should be terminated, he is sure of receiving, after a period of three years or less, the reserve value that he has built up. This may take the form of cash, extended term insurance, or fractional paid-up insurance. Since he may also borrow this value, there is available to him in time of stress a fund without the sacrifice of his insurance.

Various states early recognized the importance of preserving to the insured's dependents the protection which he had purchased for them and within certain limitations the proceeds were made free from attachment by his creditors. But by court interpretation he was deprived of control over his policy. Today, the contract usually reserves to him the right to change the beneficiary and to borrow or surrender at will. While such an arrangement exposes the value of his policy to the claims of his creditors in some jurisdictions, legislation is becoming common which preserves his policy even under such conditions. This type of legislation, allowing the insured to retain control over the fund which he has built up, often at considerable sacrifice, is both desirable and equitable.

In order that the insured shall know definitely the extent of the various values to which he is entitled, modern policies contain tables showing the cash or loan values, the length of the period of extended term insurance, and the amount of protection where a fractional paid-up policy is desired. Additional tables are included showing the amounts of the monthly, quarterly, semi-annual and annual payments under both the instalment and the continuous instalment options. Such definite information, immediately available, is of considerable advantage to the insured in making an intelligent choice of available benefits.

For those desiring additional protection the great majority of companies have made available two supplementary contracts, the one covering the hazard of total and permanent disability and the other furnishing additional payment in case of death arising out of accidental means. While the experience of the companies with the disability clause has not been favorable, the hazard is a serious one, and some provision, at least to the extent of premium waiver, should be continued. The double indemnity clause also satisfies a real need in certain cases.

Undoubtedly the completeness and positiveness of the policy have aided materially in promoting the growth of the life insurance business. But liberality may be carried too far. A provision in the contract, prejudicial to the interests of the majority of the policyholders, is undesirable. Thus where a surrender charge is insufficient to cover the cost of obtaining policies which lapse in the immediate future, the deficit must be borne by the established policyholders. Equity is better served by a contract which places the interests of continuing members above those of new entrants.

From the foregoing study it is evident that the modern life insurance policy is a development of changing economic conditions. Many minds have contributed to bring about its present comprehensiveness. Stimulated by the needs and desires of policyholders, influenced by the courts, at times held in check and at times urged on by state legislatures and insurance departments, life insurance officials have evolved a remarkable document. How much truer today are the words of the learned Pothier, written well over a century ago, which characterize the contract of life insurance as one of the most extraordinary and interesting that the genius of man has produced!

APPENDIX I

COPY OF ONE OF THE FIRST POLICIES GRANTED BY THE LONDON ASSURANCE CORPORATION, 1721 [1]

Government Stamp,
3 s, 10 d.

No. 12

By the Governor and Company of the London Assurance of Houses and Goods from Fire.

In the Name of God, Amen. Mr. Thomas Baldwin of St. Margarets Westminster Doth make Assurance, and causeth himself to be assured upon the Natural Life of Mr. Nicholas Bourne of St. Margarets Westminster for and during the Term and Space of Twelve Calendar Months, to commence the First day of December next in the Year of Our Lord One Hundred Thousand Seven Hundred and Twenty-one and fully to be compleat and ended. And it is Declared, that this assurance is made to and for the Use, Benefit, and Security of the said Thomas Baldwin, his Executors, Administrators, and Assigns, in Case of the death of the said Nicholas Bourne within the Time aforesaid, which the above Governor and Company do allow to be a good and sufficient Ground and Inducement for the making this Assurance, and do agree that the life of him the said Nicholas Bourne is and shall be rated and valued at y^{e} Sum Assured without any farther Account to be given to them for the same: The said Governor and Company therefore, for and in consideration of Five Guineas per-cent to them paid, do assure, assume, and promise, that he the said Nicholas Bourne shall, by the Permission of Almighty God, live, and continue in this Natural Life, for and during the said Term and Space of Twelve Calendar Months, to commence as aforesaid. Or in Default thereof, that is to say, In case he the said Nicholas Bourne shall in or during the said time, and before the full End and Expiration thereof, happen to dye, or decease out of this world by any Ways or Means whatsoever, That then the abovesaid Governor and Company will well and truly satisfy, content, and pay unto the said Thomas Baldwin, his Executors, Administrators or Assigns, the Sum or Sums of Money by him Assured, and here underwritten, without any Allowance, Deduction, or Abatement whatsoever, to be be made out of the same, or any Part thereof, and without questioning why or wherefore this Assurance was or is made, and without any manner of Dispute, Plea, Pretence, or Allegation whatsoever, in Law or Equity, to the contrary: Hereby promising and binding themselves and their Successors to the Assured, his Executors, Administrators, and Assigns, for the true Performance of the Premisses, confessing themselves paid the Consideration due unto them for this Assurance by y^{e} Assured.

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[1] *J. I. A.* (1881), vol. 22, pp. 248, 249. Two obvious errors are so in the source.

Provided always, And it is hereby declared to be the true Intent and Meaning of this Assurance, and this Policy is accepted by the said Thomas Baldwin upon condition that the same shall be utterly void and of no effect, in case the said Nicholas Bourne shall voluntarily go to Sea, or into the Wars, by Sea or Land, without License first had or obtained for his so doing, in Writing, under the Seal of the said Governor and Company. Any Thing in these Presents to the contrary hereof in anywise notwithstanding.

In Witness whereof the said Governor and Company have caused their Common Seal to be hereunto affixed, and the Sum or Sums by them Assured, to be here under-written, at their Office in London, This Twenty-fifth day of November, in the Eighth Year of the Reign of Our Sovereign Lord George by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, etc.

Annoq. Domini One Thousand Seven Hundred and Twenty-one.

£100

The said Governor and Company are content with this Assurance for One Hundred Pounds. prem^{m} rec^{d}.

Witness,

J. W. Wilson, Sec^{ry}.

(L. S.)

APPENDIX II

COPY OF A POLICY "UPON THE LIFE OF ANY PERSON" IN USE IN HAMBURG, 1731 [1]

We the underwritten, for us and our Heirs, assure unto.......................................each of us the Sum by us signed hereunderneath, at..........................per Cent. Premium, on the Life of the Person of......................... ....sailing as.....................................on board of the Ship called the...bound from..............................to..............................., or, in Case this Ship should be lost, which God forbid! and this Person happened to be saved, then on any other Ship, aboard whereof he shall embark himself, or even if he was to pursue his Journey by Land. Pray God grant him a safe Passage!

We take upon ourselves the Hazard and Risk of this Person, whether he loses his Life and dies in a natural way or by any violent or other means whatever, during the present Voyage, from the Time he goes on board, until his safe Arrival at the Place he is bound to, and is landed again alive on Shore from on board.

We engage, if this Person die a natural or a violent Death during the Voyage, or before he is landed on Shore from on board after his Arrival, or before he arives at that Place either by Water or by Land, that he will then pay to his Heirs, or to the Bearer of this Policy, the respective Sums by each of us here underwrote without Delay. We according submit ourselves to the Ordinance of this City of Hamburg relating to Assurances and Averages, with all the Clauses and Conditions thereof, whether printed or added hereunto in Writing, which latter shall be equally valid with the printed ones, or even preferable to them.

For the true Performance whereof we bind all our Goods and Chattels, without any Fraud or Deceit.

This done by

Sworn Broker.

Hamburg the

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[1] Magens, Nicolas, *An Essay on Insurances,* London (1755), 2 vols., vol. 2, pp. 249, 250.

APPENDIX III

FORM OF LIFE INSURANCE POLICY USED IN 1754[1]

In consideration of five pounds for one hundred pounds for one year, and according to that rate for every greater or lesser sum, received of Mr. George Cockburne, Wee whose names are hereunto subscribed do for ourselves severally and our several heirs, executors, administrators, or assigns, and not one for the other or other of us, or for the other or other of us, or for the heirs, executors, administrators, or assigns of the other or others of us, assume and promise that we respectively or our respective heirs, executors, administrators, or assigns shall and will pay or cause to be paid unto the heirs, executors, administrators, or assigns of the said Mr. George Cockburne the sum and sums of money which wee have hereunto subscribed, with an abatement of £2 per cent. only, In case the Right Reverend William Carmichael, Lord Bishop of Clonfert, shall die or depart this life by any ways or means whatsoever (suicide and the hands of justice excepted), at any time on or between this present 27th day of June, 1754, and the 27th June next, 1755, both days inclusive.

Provided always, and it is hereby declared to be the true intent and meaning of this policy of assurance and this policy, and accepted by the said Mr. George Cockburne, upon condition that the same shall be utterly void and of no effect in case the aforesaid Right Reverend William Carmichael, Lord Bishop of Clonfert, shall voluntarily go out of his Britanick Majesty's dominions of Great Britain and Ireland within the time above specified, without license in writing first had and obtained for that purpose of us the insurers on this policy. London, June 27th, 1754.

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[1] *J. I. A.* (1855), vol. 5, p. 349.

APPENDIX IV

COPY OF THE FIRST POLICY ISSUED BY THE PRESBYTERIAN MINISTERS CORPORATION, 1761[1]

Province of Pennsylvania,

THIS INDENTURE, Made this *Twenty second* Day of *May* in the Year of our Lord, one Thousand seven Hundred and *Sixty-one* Between *Francis Alison* of *Philadelphia* in the County of *Philadelphia* Minister of the Gospel, of the one Part, and the Corporation for Relief of poor and distressed Presbyterian Ministers, and of the poor and distressed Widows and Children of Presbyterian Ministers, of the other Part: Witnesseth, That the said *Francis Alison* for and in Consideration of the Covenants and Agreements hereinafter mentioned, on the Part and Behalf of the said Corporation, to be kept, performed and fulfilled, and of the Benefits and Advantages thereby to arise and accrue to the Widow and Children of the said *Francis Alison* after his Decease; and for divers other good Considerations him thereto moving, doth covenant, promise, grant, and agree to and with the said Corporation for the Relief of poor and distressed Presbyterian Ministers, and of the poor and distressed Widows and Children of Presbyterian Ministers, by these presents in Manner and Form Following, That is to say, That he the said *Francis Alison* shall and will during the Term of his natural Life, yearly, and every Year, pay, or cause to be paid on the *Twenty second* Day of *May* in each year, the Annuity or Sum of *Six pounds* current Money of the Province of Pennsylvania, to the said Corporation and their Successors, or their Order; Whereof the first Payment was made on the *Twenty second* Day of *May* And further, That on the Marriage of the said *Francis Alison* and as often as he shall marry, the said *Francis Alison* shall and will on every such Marriage, pay, or cause to be paid unto the said Corporation, and their Successors, the Sum of *Six* Pounds over and above the said Annuity. And the said Corporation, for themselves and their Successors, do covenant, promise, grant, and agree to and with the said *Francis Alison* his Heirs, Executors and Administrators, by these Presents, That if the said *Francis Alison* shall well and faithfully fulfil and perform his covenant aforesaid, by paying, or causing to be paid yearly and every year, at the Day and Times above-mentioned during his natural Life, the said Annuity or Sum of *Six* to the said Corporation, their Successors, or Order, according to the true Intent and Meaning of these Presents; then, and in such Case, but not otherwise, the said Corporation and their Successors, shall and will yearly and every Year from and after the Decease of the said *Francis Alison* well and truly pay, or cause to be paid to the Widows and Children, or Widow, or Children, (if any) of the said *Francis Alison,* the Annuity or Sum of *Twenty one pounds* current Money aforesaid during the Term, in the Proportions, and in the Manner and Form as is expressed and particularly mentioned and set forth in a Plan of Agreement between said Corporation, and the annual Contributors, which for this purpose is to these Presents annexed.

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[1] *T. A. S. A.* (1890), vol. 1, No. 3, p. 13.

In Witness whereof, The Corporation for Relief of poor and distressed Presbyterian Ministers, and of the poor and distressed Widows and Children of Presbyterian Ministers, Have put their common Seal to These Presents, the Day and Year first above-written.

Seal of the
Presbyterian
Ministers.

William Humphreys,
Treasurer.

APPENDIX V

COPY OF A POLICY EFFECTED IN GLASGOW, 1785 [1]

For and in consideration of Three pounds three shillings sterling for one hundred pounds sterling, and so in proportion for any greater or lesser sums by us severally hereunto subscribed and to us respectively paid by Robert Walkinshaw, Sheriff Clerk of Renfrewshire, the receipt and payment whereof We do ourselves severally and respectively, every one for himself, his heirs, executors, and administrators, and not jointly nor one for the other of us, by these presents undertake and promise to pay or cause to be paid unto y^{e} Executors, Administrators or Assigns of the said Robert Walkinshaw, The full sum or sums of money hereunto by Us subscribed as aforesaid. In case the said Robert Walkinshaw shall die or cease this Life by any ways or means whatsoever, Suicide and the hands of Justice always excepted, between the seventh day of September current and the seventh day of September next, both days included.

In witness whereof we the assurers have subscribed our names and sums at Glasgow this eighth day of September 1785 years, before these Witnesses, John Boyle, Merchant in Glasgow, and Clark Finlay, his Clerk, by whom these presents are written.

The above-named Robert Walkinshaw, Warranted in good health the seventh current, and not to depart the Kingdom of G^{t}. Britain during the term of this policy.

Michael Erskine,	One hundred pounds.
John Aston, Jun.,	One hundred pounds.
John Gordon,	Two hundred pounds.
Arch$^{B.}$ Govan,	One hundred pounds.
George Bogle,	One hundred pounds.

John Boyle, Witness.

Charles Finlay, Witness.

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[1] Walford, Cornelius, "History of Life Assurance in the United Kingdom," *J.I.A.* (1885-86), vol. 25, pp. 18, 19. "The insured was 28 at the time of insuring; and the 3-guinea rate was a modification of former practice in Life underwriting—but also probably due to its being entirely a 'home' risk."

APPENDIX VI

FORM OF POLICY IN USE IN 1790 [1]

No. 1088

Insurance is hereby made by Benjamin Lincoln Esq'r on his Natural Life, aged about fifty Six years, for and during the Term and Space of twelve Kalender Months, to Commence from The day of The date hereof, and fully to be Compleated and ended, and it is declared that, this Assurance is Made for the Use and benefit of the said Benjamin Lincoln, his heirs, Executors, Adm'rs & Assigns, in Case of the death of the said Benjamin Lincoln, within the Period of twelve Kalender Months as aforesaid, and we the assurers do agree, That the life of the said Benjamin Lincoln is and shall be rated at the Sum of one Thousand pounds lawful money, and Valued at that Sum, without any further account to be given for the same, acknowledging ourselves to be Content to bear the risque & hazard for The Term aforesaid, for which we have received the Primium due to us of five pounds per Cent, and for which we do Assure and Promise, That the said Benjamin Lincoln, by the Permission of Almighty god, shall live and Continue in this Natural life, for the Term and Space of Twelve Kalender Months as aforesaid, or in default thereof, That is to say in Case the said Benjamin Lincoln shall in or during the said Term, and before the Expiration thereof happen to die or decease out of this world, then we will well and Truly pay and Content unto the heirs, Executors, Adm'rs. or assigns of the said Benjamin Lincoln. The Sums we have hereunto Subscribed, hereby Promising and Binding ourselves, not one for the other, but each one for himself, his heirs, Executors, Adm'rs & Goods. Provided allways, and it is hereby declared That The True intent and meaning of this Policy of Insurance is Accepted by the said Benjamin Lincoln upon Condition, That the same shall be Utterly void and of no Effect in Case he the said Benjamin Lincoln, shall voluntarily go into any Warrs by Sea or Land or Undertake any other Hazardous matter—Whereby his life may be lost, Without the License of us the Subscribers for so doing. In Witness Whereof We have hereunto Subscribed our names in Boston December The Twenty first one Thousand Seven hundred & ninety.

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[1] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Review Pub. and Print. Co., Phila. (1888), pp. 622, 623.

N. B. it is agreed and understood That this Policy of Insurance Shall Cease and be ended on The Twenty first day of December 1791, at the Setting of the Sun.

£300	John Coffin Jones three hundred Pounds.
300	Joseph Russell, Ju'r Three Hundred pounds.
200	Caleb Hopkins Two hundred pounds.
100	Thos. Dickason, Jun'r One Hundred pounds.
100	Daniel Sargent One hund'd pounds
£1,000	lawful money.

APPENDIX VII

COPY OF FIRST LIFE POLICY ISSUED BY THE INSURANCE COMPANY OF NORTH AMERICA, 1796[1]

By the President & Directors of the Insurance Company of North America.

Whereas *Theophile Cazenove* doth make Insurance and cause himself to be insured upon the Natural Life of *Bon Albert Briois de Beaumez* (who attained the age of Forty one years in the month of December now last past, and is about to sail for India on board the Ship *Asia* whereof *Captain Edward Yard* is commander) for and during the Term and Space of Eighteen calendar months commencing on the Day of the Date hereof; and fully to be complete and ended: And it is declared that this Insurance is made to and for the use Benefit & Security of the said *Theophile Cazenove* his Executors Administrators and Assigns, in case of the death of the said *Bon Albert Briois De Beaumez* within the time aforesaid; which the above president and Directors do allow to be good and sufficient ground & Inducement for the making this Insurance, and do agree that the Life of the said *Bon Albert Briois de Beaumez* is and shall be rated and valued at the sum insured. The said President & Directors therefore for and in consideration of Ten per cent to them paid, do assure, assume and promise that he the said *Bon Albert Briois de Beaumez,* shall, by the permission of Almighty God, live and continue in this natural Life for, and during the said Term and space of Eighteen calendar months to commence as aforesaid; or, in default thereof, that is to say, in case he the said *Bon Albert Briois de Beaumez* shall in and during the said Time and before the full end and determination thereof, happen to die or decease out of this World, by any way or means whatsoever, suicide, or the hands of Justice excepted, that then the above mentioned President & Directors will well and truly satisfy and pay unto the said *Theophilus Cazenove,* his Executors, Administrators or Assigns the sum or sums of money by them Assured, and hereunderwritten, hereby promising and binding themselves and their successors to the Assured his Executors, Administrators, or Assigns, for the True performance of the premises, confessing themselves paid the consideration due unto them for this Insurance by the

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[1] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Review Pub. and Print. Co., Phila. (1888), pp. 623, 624.

Assured, provided always and it is hereby declared to be the true Intent and meaning of this Insurance and this Policy is accepted by the said *Theophilus Cazenove* upon condition that the same shall be utterly void and of no effect in case the said *Bon Albert Briois de Beaumez* shall at the Date hereof exceed the age of Forty-one years and an half, or shall voluntarily go to sea (except on his intended voyage to India above mentioned) or into any Wars, by Sea or Land without License in writing first had and obtained from the said President and Directors, for his so doing, anything in these presents to the contrary hereof in any wise notwithstanding. In Witness Whereof the President & Directors of the Insurance Company of North America have, by the said President, subscribed the sum insured, and caused their common Seal and the Attestation of their Secretary to be annexed to these presents, at their Office in Philadelphia on the Twenty fifth day of May one thousand seven hundred and ninety-six.

500
Drs. 5 000 @ 10 P ct. 50 500 50
Policy.

Appendix VIII

Copy of Policy Used by the Pennsylvania Company[1]

WHOLE LIFE POLICY
PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES

Policy of Insurance

On the Life of..................................for $....................Annual Premium $..............., payable during life.

No...............................

These Presents Witness, That in consideration of the sum of,................................ which......................................hath at the execution of these presents, paid to The Pennsylvania Company for Insurances on Lives and Granting Annuities (the receipt whereof is hereby acknowledged) and of the further sum of........................ to be paid on or before the......................day of.............................in each and every year during the continuance of this Policy for Insuring the Life of ....for the whole duration thereof, the said Company do hereby covenant and bind themselves (and their successors) that on the death of the said......................................the said Company shall and will, sixty days after due proof thereof, well and truly pay to the executors, administrators, or assigns, of the said......................................the just and full sum of...

Provided Always, and it is hereby expressly declared to be the true intent and meaning of these Presents, that if the declaration subscribed by ....which hath been deposited with this Company, is in any respect not true, or if the said......................................shall die at sea, or by.............. own hands, whether sane or insane, or of any wound or injury received in a duel, or by the hands of justice, or if during the continuance of this Policy, the said......................................shall go beyond the limits of the United States, except within the British Provinces of New Brunswick and Upper and Lower Canada, or within the said States to the Southward of the Southern Boundary of the States of Virginia and Kentucky, or shall enter any Military Service, by Sea or Land, (except the Militia) without the consent in writing of the President and Directors of this Company, or if the said.. shall not pay the said annual instalments on or before the day herein before mentioned for the payment thereof then, and in every such case, the said Company shall not be liable to the payment of the said sum of................................... or any part thereof, and this Policy so far as relates to such payment shall be utterly void. Provided always nevertheless that if within fifteen days after the day of payment before mentioned, the annual instalment then unpaid, shall be paid to the said Company, the said..being at the time of such payment living and in good health, but not otherwise, then this Policy shall have the like effect as if the said annual instalment had been paid on the day herein before mentioned for the payment thereof.

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[1] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries (1683-1882)*, Rev. Pub. and Print. Co., Phila. (1888), p. 639.

This Policy not to be assigned without the consent of the aforesaid Company.

In Testimony Whereof, The Pennsylvania Company for Insurances on Lives and Granting Annuities, have caused their common Seal to be hereunto affixed the...........................day of.............................one thousand eight hundred and..................

By the Company

....President.
L. S. ....Actuary.

Date of Receipt	Premium Received	Sum Insured	Actuary's Signature

APPENDIX IX

COPY OF TERM LIFE INSURANCE POLICY[1]

The Girard Life Insurance, Annuity
and Trust Company of Philadelphia

Policy of Insurance

On the Life of..................................for................, for................years, at an annual premium of..................................

No.

This Policy of Insurance Witnesseth, That whereas..being desirous of making an Insurance upon..for the term of ....years, and having subscribed or caused to be subscribed, and deposited with this Company, a declaration setting forth the ordinary and present state of health of the said..................................wherein it is declared that the age of the said..................................did not then exceed....................years; and having paid to The Girard Life Insurance, Annuity and Trust Company of Philadelphia, the sum of......................as a consideration for the Insurance of the sum under mentioned, for one year, from..........................one thousand eight hundred and..........................

Now Know all Men by these Presents, that in case the said.............................. shall happen to die at any time within the term of one year, as above set forth, the said The Girard Life Insurance, Annuity and Trust Company of Philadelphia do hereby covenant and bind themselves well and truly to pay to..executors, administrators, or assigns, ...the sum of......................within sixty days after due notice and proof of the death of the said..

It is hereby agreed that this Policy may continue in force from *year* to *year,* until the expiration of the term first above mentioned, provided that the said..................................shall duly pay or cause to be paid to the said Company, on or before the..........................next ensuing, the sum of.......................... and the like sum annually on or before the day aforesaid; which annual payments shall be accepted at every such period, as a full consideration for such Insurance.

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[1] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries* (*1683-1882*), Review Pub. and Print. Co., Phila. (1888), pp. 652, 653.

Provided Always, and it is hereby declared to be the true intent and meaning of this Policy, and the same is accepted by the said.................................... upon these express conditions, that if the above named declaration, upon the faith of which this agreement is made, shall be found in any respect untrue, or in case the said....................................shall die at sea, or shall, without the consent of this Company, previously obtained in writing, pass beyond the settled limits of the United States (excepting into the settled limits of the British Provinces of the two Canadas, Nova Scotia, or New Brunswick;) or shall, without such previous consent, visit those parts of the United States which lie south of the southern boundaries of the States of Virginia and Kentucky; or shall without such previous consent, enter into any military or naval service whatsoever (the militia not in actual service excepted;) or in case he shall die by h own hand, in, or in consequence of a duel, or by the hands of justice, or in the known violation of any law of these States, or of the United States, or of the said Provinces, then and in every such case this Policy shall be null, void, and of no effect, and all previous payments made thereon shall be forfeited to the said Company. This Policy to cease and determine at twelve o'clock, noon, on the.............................which will be in the year one thousand eight hundred and.........................

This Policy not to be assigned without the consent of the aforesaid Company.

In Testimony Whereof, The Girard Life Insurance, Annuity and Trust Company of Philadelphia, have caused their common seal to be hereunto affixed, the.........................one thousand eight hundred and.....................

By the Company,

President.

Actuary.

This Policy shall not become void if the party whose life is insured shall pay the premium at any time within fifteen days after it has become due.

The insured is permitted to travel and visit in the United States, South of the southern boundary of Virginia and Kentucky, from the first day of November to the first day of July next following.

Any person insured, not being engaged in any maritime occupation, is permitted, during peace, to go or travel by sea in any sound sailing packet or steamer, direct from one place to another, situated on the Atlantic Coast, between the Southern boundary of Virginia and the northern point of Nova Scotia.

It is hereby agreed that the annual payment or premium named in the within Policy, may be commuted into..........................payments of..........................dollars each, payable on the..........................days of..........................in each year, instead of said annual payment. And in case the said..........................shall happen to die in any year of the insurance before the..........................for that year shall have matured and shall have been paid to the said Company, the amount of such payments or payment shall be retained by the said Company, out of the amount of insurance to be paid; and as a..........................payment only was received on issuing this Policy instead of the full annual premium, the above agreement is to take effect the first year, and this Policy will expire at noon on the..........................day of..........................A. D..........................unless renewed as above stated and provided for, anything contained in the within Policy to the contrary notwithstanding.

APPENDIX X

20-PAYMENT LIFE ANNUAL DIVIDEND POLICY WITH DISABILITY AND DOUBLE INDEMNITY BENEFITS

Policy No.………………   Amount, $1000.00   Age 35

THE………………………LIFE INSURANCE COMPANY

WILL PAY

to the Insured's *Wife, Jane Doe,* the Beneficiary, *One Thousand* Dollars, upon receipt of due proof of the death of *John Doe,* the Insured, or *Two Thousand* Dollars, upon receipt of due proof that such death resulted from bodily injury effected solely through external, violent, and accidental means, and occurred (a) within ninety days after such injury and (b) before the policy anniversary nearest his (or her) 70th birthday, all upon the conditions set forth in Section 1,

and

if the Insured is, before the policy anniversary nearest his (or her) 60th birthday, totally and presumably permanently disabled,

WILL PAY

to the Insured *Ten* Dollars monthly during such disability, besides waiving premium payments, all upon the conditions set forth in Section 3.

This Policy also provides for
Optional Modes of Settlement (Section 2),
Annual Dividends (Section 4),
Application of Dividends to make Policy fully paid or mature as an Endowment (Section 5),
Privilege of Change to other Forms of Policy (Section 6),
Loans (Section 8), Cash Value (Section 9),
Options on Lapse—Continued Term Insurance, Paid-up Insurance, or Cash Value (Section 10),
Grace in Payment of Premiums (Section 12),
Privilege of Reinstatement (Section 13).

This Policy is issued in consideration of the application and of the payment of the first premium of *Forty-Four and 43/100* Dollars, receipt of which is hereby acknowledged, and of the payment to the Company of *Forty-Four and 43/100* Dollars (of which *one and 42/100* Dollars is the premium for the Double Indemnity Benefit and *Four and 67/100* Dollars the premium for Disability Benefits) on each *first* day of *February* hereafter until *twenty* full years' premiums shall have been paid or until the prior death of the Insured.

The succeeding pages 2, 3, and 4 of this Policy are a part of this contract.

In Witness Whereof, the Company has caused this Policy to be executed this *First* day of *February 1931.*

....Secretary ....President

Countersigned..Registrar

Section 1. Double Indemnity before Age 70.

The Double Indemnity will be payable upon receipt of due proof that the Insured died as a direct result of bodily injury effected solely through external, violent, and accidental means, independently and exclusively of all other causes, and of which, except in the case of drowning or asphyxiation, there is evidence by a visible contusion or wound on the exterior of the body, and that such death occurred (a) within ninety days after the date of such injury and (b) before the anniversary of the date of the Policy on which the age of the Insured at nearest birthday is seventy years; provided that the Double Indemnity shall not be payable if death resulted directly or indirectly from disease or bodily or mental infirmity, or from self-destruction, whether sane or insane, or from military or naval service in time of war, or from any act incident to war, or from engaging in a riot or insurrection, or from committing an assault or felony, or from operating or riding in any kind of aircraft, whether as a passenger or otherwise, except as a fare-paying passenger in a licensed passenger aircraft provided by an incorporated passenger carrier and operated by a licensed pilot on a regular passenger route between definitely established airports.

The Company shall have the right and opportunity to examine the body and to make an autopsy unless prohibited by law.

This provision for Double Indemnity shall terminate upon written request of the Insured.

Upon termination of this provision for Double Indemnity or, if there shall have been no previous termination, upon the anniversary of the date of the

Policy on which the age of the Insured at nearest birthday is seventy years, the premium, if any, payable after such termination or on or after such anniversary shall be reduced by the premium charged for the Double Indemnity benefit.

Section 2. Optional Modes of Settlement.

The proceeds of this Policy, upon maturity as a death claim or upon surrender, as the case may be, may, if so elected, be settled by one of the following optional Modes of Settlement instead of being paid in one sum:—

Option 1.—By the Company's holding the proceeds as a principal sum payable at the death of the payee, the Company meanwhile paying monthly interest (with a final interest payment to the date of such death) at three per cent a year plus participation in excess interest at such rate as the Company may determine for each year;

Option 2.—By payment of equal monthly instalments for the number of years elected, in accordance with the table on page 4. Instalments will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 3.—By payment of equal monthly instalments for five, ten, or twenty years certain, as elected, and for the remaining lifetime of the payee, in accordance with the table on page 4. Instalments for the period certain will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 4.—By payment of equal monthly instalments of the amount specified in the election as long as the proceeds, together with interest thereon as provided for in Option 1, shall suffice, with a final payment of any balance less than one such instalment.

Under Option 1 the first interest payment will be due at the end of one month from the date when the proceeds became payable. Under Options 2, 3, and 4 the first instalment will be due when the proceeds become payable.

Note.—If requested in the election, payment of interest under Option 1 or of instalments under Option 2, 3, or 4 will be made quarterly, semi-annually, or annually instead of monthly. The first payment of interest under Option 1 will be due at the end of three months, six months, or one year according as interest payments are quarterly, semi-annual, or annual. The first instalment under Option 2, 3, or 4 will in all cases be due when the proceeds become payable.

Method of Election.—An optional Mode of Settlement can be elected, or a previous election revoked or changed, only by written notice to the Company accompanied by the Policy for endorsement.

Note.—When a payee becomes entitled to a single sum, he may elect one of these options.

General Provisions.—Joint or contingent payees may be named under the above options within such limitations as may be prescribed by the Company, except that under Option 3 there cannot be joint payees and the instalments to contingent payees will not be payable beyond the period certain.

These optional Modes of Settlement are not available if a corporation, association, partnership, or estate is the payee, nor if the guaranteed interest payments or instalments will, irrespective of dividends or indebtedness, be less than $10 each.

If any of the above options has been elected, a supplementary contract bearing the date on which the proceeds of the Policy become payable and providing for the settlement elected will be issued.

Surrender or Transfer of Supplementary Contract.—Unless otherwise specified in the election, neither the supplementary contract nor any of the benefits accruing thereunder shall be transferable or subject to surrender, commutation, or encumbrance, except that at the death of the last surviving payee the then surrender value as defined below shall be payable to the executors or administrators of such payee.

The surrender value of the supplementary contract shall be as follows:

Option 1.—The principal sum with any accrued interest;

Options 2 and 3.—The commuted value, computed at three per cent interest compounded annually, of future instalments certain. Under Option 3 no such surrender may be made during the lifetime of the original payee;

Option 4.—Such part of the proceeds of the Policy and interest thereon as shall not have been paid in instalments.

Section 3. Benefits in Event of Total and Permanent Disability Before Age 60.

Benefits if no Premium is in Default.—If, while no premium on this Policy is in default, due proof is received at the Home Office of the Company (1) that the Insured is totally disabled as a result of disease or of bodily injury which was not self-inflicted, so as to be incapable of engaging in any occupation for remuneration or profit, (2) that such total disability has continued without interruption for a period of at least four months (total disability of such duration being presumed to be permanent during its continuance), and (3) that such total disability commenced before the anniversary of the date of the Policy on which the age of the Insured at nearest birthday is sixty years, the Company, during the continuance of such total disability, will

Waiver of Premium (a) Waive payment of each premium under this Policy which shall become due during such total disability, and refund each premium paid which became due during such total disability; but no premium shall be refunded the due date of which occurred more than one year before the receipt at said Home Office of written notice of claim for Disability Benefits; and

Disability Income (b) Pay to the Insured a monthly income of the amount stated on the first page hereof for each completed month of such total disability, except that no income payments shall be made (1) for the first three months of such total disability, or (2) for any month beginning more than one year before the date of receipt at said Home Office of written notice of claim for Disability Benefits.

Benefits if Premium is in Default.—If any premium on this Policy is in default when such due proof is received at said Home Office, Disability Benefits shall be allowed as if there were no premium in default and the Policy will be reinstated, provided (1) that written notice of claim for such benefits shall be received at said Home Office not later than one year after the due date of the premium first in default and (2) that such total disability began either (a) before the due date of the premium first in default or (b) within thirty-one days after such due date. In the case of (b), such premium together with interest thereon at the rate of five per cent a year must be paid to the Company as a condition precedent to the allowance of Disability Benefits and reinstatement of this Policy.

Specified Disabilities.—The entire and irrecoverable loss of the sight of both eyes, or the use of both hands or both feet or one hand and one foot, will be considered total disability.

General Provisions.—Written notice of claim for Disability Benefits must be received at said Home Office during the lifetime of the Insured and during the continuance of such total disability, otherwise the claim shall be invalid; provided, however, failure to give such notice within the time provided for herein shall not invalidate any such claim hereunder if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible. In no case, however, shall any premium be waived or refunded the due date of which occurred more than one year before the date of receipt at said Home Office of written notice of claim for Disability Benefits, nor shall any income payment be made for any month beginning more than one year before the date of receipt at said Home Office of written notice of claim for Disability Benefits.

The Company shall have the right, before making any disability income payment or waiving any premium, to require due proof of the continuance of total disability, including physical examination of the Insured by the Company, but such proof shall not be required oftener than once a year after such disability has continued for two years. If such proof is not furnished on demand or such physical examination not permitted or if it shall appear to the Company that the Insured is no longer totally disabled, no further disability income payments will be made or premiums waived or refunded.

No disability income payment shall be made for any fractional part of a month of disability.

Neither the dividends nor the amount payable in any settlement of this Policy shall be decreased because Disability Benefits shall have been allowed hereunder.

If the Insured shall, at any time, so recover that the payment of Disability Benefits terminates and later shall furnish due proof that he has again become totally disabled, Disability Benefits shall be subject to the same conditions as if no prior disability had existed.

Any disability income payment and any refund of premium which shall have become payable and which remain unpaid at the death of the Insured shall be added to the proceeds of the Policy and paid to the payees thereof.

If the disability shall be the result of, or accompanied by, mental incapacity, the disability income and any refund or premiums may, at the sole discretion of the Company, be paid to any one or more of the beneficiary or beneficiaries, instead of to the Insured, until request for such payment is filed at said Home Office by the duly qualified guardian or committee of the Insured.

The words "due" and "due date," used in this Section 3 as relating to a premium, shall be construed as referring to the date on which such premium is due without allowance for any period of grace.

This provision for Disability Benefits shall terminate either (a) automatically upon the Insured's engaging, voluntarily or involuntarily, at any time in military or naval service in time of war outside of the continental limits of the United States of America and of the Dominion of Canada, or (b) upon written request of the Insured.

Upon the termination of this provision for Disability Benefits or, if there shall have been no previous termination, upon the anniversary of the date of the Policy on which the age of the Insured at nearest birthday is sixty years, the premium, if any, payable after such termination or on or after such anniversary shall be reduced by the premium charged for such benefits.

Section 4. Annual Dividends.

The share of the divisible surplus accruing on this Policy shall be allotted as a dividend annually on each anniversary of its date, the first such dividend being payable only if any premium due on the first anniversary be duly paid.

At the option of the Insured, each such dividend shall be either:—

1. Used to purchase a paid-up participating addition to the sum insured (without Double Indemnity or Disability Benefits), herein called dividend addition, which shall be automatically added on the date of allotment and will continue in force unless and until one of the other options be duly elected; or,

2. Paid to the Insured in cash; or,

3. Used toward payment of any premium if the remainder of the premium is duly paid; or,

4. Deposited with the Company at interest within ninety days from date of allotment (called dividend deposit). Interest will be credited at such rate as may be determined by the Company, but never less than three per cent a year, and will be added to existing dividend deposits annually. Dividend deposits existing at the death of the Insured shall be then payable to the beneficiary.

The Insured may at any time, provided there is no premium more than three months in default, surrender any dividend additions for the full reserve thereon or withdraw any accumulated dividend deposits.

Post Mortem Dividend.—Upon the death of the Insured a cash dividend will be credited to this Policy for the fraction of the policy year elapsed before such death.

Section 5. Dividend Additions or Deposits may be applied to make the Policy either:—

(a) Fully Paid.—If at any time either the reserve for any dividend additions, or any accumulated dividend deposits, or both together, shall equal or exceed the present value (on the basis of the American Experience Table of Mortality assuming three per cent interest) of the future net premiums under this Policy, the Company will, upon the written request of the Insured, apply a sufficient amount of such reserve and such deposits to change this Policy to a paid-up participating Policy for the same face amount and providing for the same benefits, including Double Indemnity and Disability Benefits, if any, as this Policy.

Any dividend additions or dividend deposits in excess of those applied to pay such present value shall continue in force.

or (b) Mature as an Endowment.—If at any time the reserve for the face amount of this Policy and for any dividend additions, together with any accumulated dividend deposits, shall equal or exceed the face amount of this Policy, the Company will, upon the legal surrender of the Policy, pay such face amount plus such excess, if any.

Section 6. Privilege of Change to other Forms of Policy.

Provided this Policy is in full force and no premium is in default and provided the Insured is not, and at no time has been, totally and permanently disabled within the meaning of Section 3 of this Policy and has not attained the age of fifty-five years, this Policy may be exchanged, without medical examination, for a premium paying policy, issued by the Company at the date of this Policy, on either the Limited Payment Life or the Endowment Insurance plan, under which premiums shall be payable for a number of years not greater than under this Policy, of the same date, face amount, and age of the Insured, and containing the same Double Indemnity and Disability Benefits as this Policy. The new policy will be at the rate of premium in force for such a policy at the date of this Policy.

To make such exchange this Policy must be surrendered for rewriting and there must be paid to the Company the differences in premiums (or, if greater, the differences in premiums exclusive of the premiums for the Double Indemnity and Disability Benefits) with interest from their respective due dates at the rate of six per cent a year compounded annually. Allowance will be made for any larger dividends on the new plan.

Section 7. Table of Cash and Loan Values and Options on Lapse.

These values are computed in accordance with the provisions of Sections 8, 9, and 10 and are on the assumptions that all premiums to end of years indicated have been paid and that there are no dividends or indebtedness.

Any dividend additions or dividend deposits will increase such values and any indebtedness to the Company on this Policy will decrease such values as provided in the above mentioned sections.

Values for intermediate periods for which premiums have been paid will be calculated as provided in Sections 8, 9, and 10.

FOR EACH $1,000 FACE AMOUNT			FOR FACE AMOUNT	
At End of Policy Year	Cash Value (Also Loan Value as Explained in Section 8)	Paid-up Non-Participating Life Insurance	Paid-up Non-Participating Continued Term Insurance for Years	Days
3	54.56	123.17	6	95
4	79.96	177.27	9	37
5	107.52	234.03	11	342
6	133.40	285.04	14	74
7	162.64	341.11	16	144
8	192.77	396.78	18	97
9	223.81	452.05	19	312
10	255.78	506.91	21	81
11	286.24	556.56	22	93
12	317.68	605.99	23	64
13	350.16	655.28	24	8
14	383.70	704.42	24	307
15	418.33	753.46	25	249
16	454.11	802.47	26	220
17	491.07	851.50	27	246
18	529.31	900.70	29	6
19	568.89	950.14	31	25
20	609.92			
21		Policy Full Paid Participating		
22				
23				
24				
25	666.72			
30	723.24			

Note: If premiums are paid to the end of a policy year, the loan value stated in the above table for the end of such year will, less interest, be available during such year as provided in Section 8.

Section 8. Loans.

If three full years' premiums have been paid (or if the balance is paid at the time of loan) and no premiums are in arrears beyond the days of grace, the Company will, upon receipt of the Policy and a loan agreement satisfactory to the Company and on the sole security of this Policy, loan an amount which with interest shall be within the limit of the cash value of this policy.

Any existing indebtedness to the Company on the Policy shall be paid out of such loan.

Interest on the loan shall be at the rate of six per cent a year payable on the due date of the loan and on each anniversary of the date of the Policy thereafter. If this interest is not paid when due it shall be added to the existing loan and bear interest at the same rate. Failure to repay the loan or pay interest shall not avoid the Policy unless the total indebtedness, including accrued interest, shall equal or exceed the cash value of the Policy, in which case the Policy shall become void thirty-one days after notice shall have been mailed to the Insured and assignee of record at the Home Office of the Company, if any, at their last known addresses.

The loan, with accrued interest, or any part thereof not less than $10, may, at the option of the Insured, be repaid at any time prior to the date when due.

In case disability income is being paid by the Company under the provisions of Section 3, the Company shall automatically apply such part of said income toward the interest payments as may be necessary to prevent the Policy becoming void under the provisions of this section.

Section 9. Cash Value.

At any time after at least three full years' premiums have been duly paid but not later than three months after default in payment of premium, this Policy may be surrendered for its net cash value. Such net cash value shall be the cash value as defined below less any indebtedness to the Company hereon.

(a) If all past due premiums have been paid, (1) the cash value on any anniversary of the date of the Policy or any premium due date other than an anniversary shall be the reserve at such time for the face amount of this

Policy and for any dividend additions hereto increased by any accumulated dividend deposits and less a surrender charge of not more than one and one-half per cent of the face amount of this Policy, or (2) the cash value on a prior date shall be the cash value mentioned in (1) less interest thereon at the rate of six per cent a year.

After the policy has been ten years in force there shall be no surrender charge.

(b) During three months after the due date of any premium in default the cash value shall be the same as at such due date except as decreased by the surrender of dividend additions or withdrawal of dividend deposits.

After any premium has been in default more than three months from its due date, this Policy shall have no cash value.

Section 10. Options on Lapse.

(a) Continued Term Insurance.—If any premium remain unpaid at the end of the days of grace, and if at least three full years' premiums have been paid, this Policy will, without action on the part of the Insured, continue, as from the due date of such premium in default, as paid-up non-participating term insurance, without Double Indemnity or Disability Benefits.

The amount of such term insurance shall be the face amount of this Policy increased by any dividend additions and by any dividend deposits and decreased by any indebtedness to the Company on this Policy. The term shall be such as the net cash value at such premium due date provided for in Section 9 (adjusted for any later loans, surrender of dividend additions, or withdrawal of dividend deposits) applied as a net single premium will purchase.

Within three months after the due date of such premium in default either of the following options may be exercised instead of having the Policy continue as such term insurance.

(b) Cash Value.—The Policy may be surrendered for the net cash value provided for in Section 9; or,

(c) Paid-up Insurance.—The Policy may be surrendered for paid-up non-participating life insurance, without Double Indemnity or Disability Benefits, payable at the same time and upon the same conditions as this Policy, the amount of such paid-up insurance being such as the net cash value applied as a net single premium will purchase.

Section 11. Reserves and Net Single Premiums.

The reserve held for the face amount of this Policy and for any dividend additions, and for the reserves and net single premiums mentioned in this Policy shall be computed in accordance with the American Experience Table of Mortality assuming interest at the rate of three per cent a year, the net single premiums being those at the attained age of the Insured.

Section 12. Premiums.

All premiums are payable on or before their due date either at the Home Office of the Company or to any agent of the Company, but only on delivery of a receipt signed by the Treasurer of the Company and countersigned by the person receiving the premium.

A grace of thirty-one days shall be granted for the payment of each premium after the first, during which days of grace the insurance shall continue in force.

If this Policy shall become payable by the death of the Insured, any unpaid premium or premiums necessary to complete premium payments for the policy year in which such death occurs (including the overdue premium, if death occurs within the days of grace) shall be deducted from the amount payable.

If any premium be not paid before the end of the days of grace, then this Policy shall immediately cease and become void, and all premiums previously paid shall be forfeited to the Company except as provided in this Policy.

Section 13. Reinstatement.

This Policy, unless it shall have been surrendered for cash, may be reinstated at any time within five years after default in payment of premium upon evidence of the Insured's then insurability satisfactory to the Company and the payment of all overdue premiums with compound interest at the rate of five per cent a year and upon the payment or reinstatement of any indebtedness to the Company on this Policy together with payment of interest in accordance with the loan provisions of this Policy.

Section 14. Miscellaneous Provisions.

Residence and Travel.—This Policy is free from restrictions as to residence and travel.

Occupation.—This Policy is free from restrictions as to occupation except the restrictions as to military or naval service applying (a) to the Double

Indemnity Benefit as provided in Section 1, and (b) to Disability Benefits as provided in Section 3.

Suicide.—In the event of the self-destruction of the Insured, whether sane or insane, within one year after the date of issue of this Policy, the amount payable shall be limited to an amount equal to the premiums paid hereon.

Incontestability.—Except for non-payment of premiums and except for the restrictions and provisions applying to the Double Indemnity and Disability Benefits as provided in Sections 1 and 3 respectively, this Policy shall be incontestable after one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue.

Misstatement of Age.—If the age of the Insured shall have been misstated, the amount payable by the Company shall be such as the premium paid would have purchased at the correct age.

Change of Beneficiary.—Unless otherwise provided by endorsement on this Policy or unless there be an existing assignment of this Policy other than to the Company, the Insured may, from time to time, while the Policy is in force, change the beneficiary by filing written notice at the Home Office of the Company accompanied by the Policy for endorsement. Such change shall take effect upon endorsement of the Policy by the Company.

The interest of any beneficiary who dies before the Insured shall vest in the Insured unless otherwise provided in this Policy.

Rights of the Insured.—Except as may otherwise be specifically provided by endorsement, the Insured may, during his lifetime, without the consent and to the exclusion of the beneficiary, exercise every option, enjoy every privilege, and receive every benefit conferred by this Policy, whether elsewhere specifically reserved to the Insured or not.

Policy Settlement.—All sums payable by the Company under this Policy shall be payable at the Home Office of the Company in the City of New York.

In any settlement of this Policy at its maturity as a death claim or on surrender, any indebtedness to the Company on this policy shall be deducted and surrender of the Policy to the Company will be required.

The Contract.—This Policy and the application, copy of which is attached, constitute the entire contract.

All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid or be used in defence to a claim under this Policy unless contained in the written application and a copy of the application is attached to the Policy when issued.

Assignment.—The Company shall not be charged with notice of any assignment of any interest in this contract until the original assignment or a certified copy thereof has been filed with the Company at its Home Office.

The Company assumes no responsibility as to the validity or effect of any assignment.

All assignments shall be subject to any indebtedness to the Company on account of or secured by this Policy.

Notice.—No agent or other person except the President, Vice-President, a Second Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits or accepting any representations or information not contained in the written application for this Policy, or to make or modify this contract, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements.

MONTHLY AND ANNUAL INSTALMENTS FOR EACH $1,000 OF PROCEEDS OF POLICY UNDER OPTIONAL MODES OF SETTLEMENT 2 and 3

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment.

OPTION 2

Number of Years' Instalments	Each Monthly Instalment	Each Annual Instalment
2	$42.86	$507.39
3	28.99	343.23
4	22.06	261.19
5	17.91	212.00
6	15.14	179.22
7	13.16	155.83
8	11.68	138.31
9	10.53	124.69
10	9.61	113.82
11	8.86	104.93
12	8.24	97.54
13	7.71	91.29
14	7.26	85.95
15	6.87	81.33
16	6.53	77.29
17	6.23	73.74
18	5.96	70.59
19	5.73	67.78
20	5.51	65.26
21	5.32	62.98
22	5.15	60.92
23	4.99	59.04
24	4.84	57.33
25	4.71	55.76
26	4.59	54.31
27	4.47	52.98
28	4.37	51.74
29	4.27	50.60
30	4.18	49.53

OPTION 3

Age of Payee When Proceeds Payable	5 YEARS CERTAIN		10 YEARS CERTAIN		20 YEARS CERTAIN	
	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
10 and under	$3.81	$44.85	$3.75	$44.21	$3.58	$42.20
11	3.83	45.07	3.77	44.41	3.59	42.36
12	3.85	45.30	3.79	44.62	3.61	42.54
13	3.87	45.54	3.81	44.84	3.62	42.71
14	3.89	45.78	3.83	45.07	3.64	42.90
15	3.91	46.03	3.85	45.29	3.65	43.08
16	3.94	46.27	3.87	45.53	3.67	43.27
17	3.96	46.52	3.89	45.76	3.69	43.47
18	3.98	46.77	3.91	45.99	3.70	43.66
19	4.00	47.02	3.93	46.23	3.72	43.87
20	4.02	47.28	3.95	46.48	3.74	44.07
21	4.05	47.55	3.97	46.74	3.76	44.29
22	4.07	47.84	4.00	47.01	3.78	44.52
23	4.10	48.14	4.02	47.29	3.80	44.75
24	4.12	48.45	4.05	47.59	3.82	45.00
25	4.15	48.77	4.07	47.90	3.84	45.25
26	4.18	49.12	4.10	48.22	3.86	45.51
27	4.21	49.47	4.13	48.56	3.89	45.79
28	4.25	49.85	4.16	48.91	3.91	46.07
29	4.28	50.24	4.19	49.28	3.94	46.37
30	4.32	50.65	4.23	49.66	3.96	46.67
31	4.35	51.08	4.26	50.07	3.99	46.99
32	4.39	51.53	4.30	50.49	4.02	47.32
33	4.43	52.01	4.33	50.93	4.05	47.66
34	4.48	52.50	4.37	51.39	4.08	48.01
35	4.52	53.02	4.42	51.87	4.11	48.38
36	4.57	53.56	4.46	52.38	4.14	48.75
37	4.62	54.13	4.51	52.90	4.17	49.14
38	4.67	54.73	4.55	53.45	4.21	49.54
39	4.73	55.36	4.60	54.03	4.24	49.96

OPTION 3 (Cont.)

Age of Payee When Proceeds Payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
40	4.78	56.02	4.65	54.63	4.28	50.38
41	4.84	56.71	4.71	55.26	4.32	50.82
42	4.91	57.43	4.77	55.91	4.35	51.27
43	4.97	58.19	4.83	56.60	4.39	51.73
44	5.04	58.99	4.89	57.31	4.43	52.20
45	5.12	59.83	4.95	58.06	4.48	52.69
46	5.19	60.71	5.02	58.84	4.52	53.18
47	5.27	61.64	5.09	59.66	4.56	53.68
48	$5.36	$62.61	$5.17	$60.51	$4.60	$54.20
49	5.45	63.63	5.24	61.40	4.65	54.71
50	5.54	64.70	5.32	62.33	4.69	55.24
51	5.64	65.83	5.41	63.30	4.74	55.77
52	5.74	67.02	5.49	64.30	4.78	56.30
53	5.85	68.26	5.58	65.35	4.83	56.84
54	5.97	69.57	5.68	66.44	4.87	57.37
55	6.09	70.95	5.78	67.57	4.92	57.90
56	6.22	72.40	5.88	68.75	4.96	58.43
57	6.35	73.93	5.98	69.98	5.00	58.95
58	6.49	75.53	6.09	71.24	5.05	59.46
59	6.64	77.22	6.21	72.55	5.09	59.96
60	6.80	78.99	6.32	73.91	5.13	60.45
61	6.96	80.85	6.44	75.31	5.17	60.92
62	7.13	82.81	6.57	76.75	5.20	61.37
63	7.31	84.87	6.70	78.23	5.24	61.80
64	7.51	87.03	6.83	79.75	5.27	62.20
65	7.71	89.31	6.96	81.30	5.30	62.59
66	7.92	91.69	7.09	82.89	5.33	62.94
67	8.14	94.19	7.23	84.50	5.36	63.27

OPTION 3 (Cont.)

Age of Payee When Proceeds Payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
68	8.37	96.81	7.37	86.14	5.38	63.57
69	8.61	99.56	7.51	87.79	5.40	63.84
70	8.86	102.43	7.65	89.46	5.42	64.08
71	9.13	105.44	7.79	91.12	5.42	64.08
72	9.40	108.57	7.93	92.79	5.42	64.08
73	9.69	111.84	8.07	94.44	5.42	64.08
74	9.99	115.25	8.21	96.06	5.42	64.08
75	10.30	118.78	8.34	97.65	5.42	64.08
76	10.62	122.44	8.47	99.21	5.42	64.08
77	10.95	126.22	8.59	100.71	5.42	64.08
78	11.29	130.13	8.71	102.14	5.42	64.08
79	11.64	134.14	8.82	103.51	5.42	64.08
80	12.00	138.25	8.92	104.80	5.42	64.08
81	12.36	142.44	8.92	104.80	5.42	64.08
82	12.73	146.70	8.92	104.80	5.42	64.08
83	13.09	151.00	8.92	104.80	5.42	64.08
84	13.46	155.34	8.92	104.80	5.42	64.08
85 and over	13.83	159.67	8.92	104.80	5.42	64.08

Appendix XI

Application Form Used by the Pennsylvania Company[1]

Form of an Application for a Life Insurance

[It is requested that the Blanks be properly filled up, and the Questions answered with exactness.]

I, of the wishing to effect an Insurance with "The Pennsylvania Company for Insurances on Lives and Granting Annuities," in the sum of upon *Life of for the † term ‡ of *ss* years, do hereby agree, that the answers which are given to the following Questions shall be the basis of the contract between the said company and me, and that if any untrue averment be contained therein, or if any material circumstance or information touching my past or present state of health or habits of life, or any disease with which the Directors of said Company ought to be made acquainted, be omitted, then all the money which shall be paid to the said Company on account of the said Insurance shall be forfeited.

At this day of One thousand eight hundred and [18]

[Signed]

The Questions above referred to.	Answers
1. When and where was above mentioned born?	On the day of one thousand hundred and at and h age does not exceed years
2. Where does he now reside, and what is h employment?	

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[1] *Proposals and Rates of the Pennsylv. Co. for Insurances on Lives and Granting Annuities,* Phila. (1847), pp. 14-17.

3. Does he intend to reside North of the Southern boundary of Virginia or Kentucky, and within the limits of the United States or Upper and Lower Canada during the continuance of the Insurance? If not, where does he intend to travel or reside?

4. Is he now in good health, and does he usually enjoy good health?

5. Has he at any time been afflicted with gout, asthma, scrofula, convulsions, palsy, apoplexy, consumption or any disease of the lungs or throat whatever, or any *other* disease likely to impair h constitution or shorten life?

6. Has h family been liable to any serious family disease, such as consumption, scrofula, etc. etc.?

7. Has he been vaccinated, or had the small-pox? and is he a sober and temperate man?

8. Is there any circumstance which renders an Insurance on h life more than usually hazardous, such as place of residence, occupation, hereditary predisposition, constitutional infirmity, or other known cause?

9. Is h life now insured in any Insurance office?

10. What will be your address during the continuance of this policy?

At this day of one thousand eight hundred and [18]

[Signed,]

---

* Insert *my own,* or *the.* † *Whole* ‡ *There*

ss The time for which the insurance is wanted, as *one, five,* or *seven years.*

[Where a Person wishes to Insure the Life of Another, the following must also be filled up and signed.]

I declare that I have an interest in the life of the aforesaid to the full amount of the sum above mentioned.

[Signed,]

Questions to be answered by the family Physician, or other respectable Physician.

Questions	Answers
11. Do you know mentioned in the preceding application, and how long have you known h ?	
12. When did you see h last?	
13. Is he now in good health, and does he usually enjoy good health?	
14. Is he a sober and temperate man?	
15. Is there anything in the pursuits, habits, place of residence, family predisposition, constitutional infirmity, or any other circumstance of the applicant, calculated to make an Insurance on h life more than usually hazardous?	
16. Do you believe that the answers given to the preceding questions and signed by are correct and well founded, or in what respect are they otherwise?	

At this day of one thousand eight hundred and [18]

[Signed,]

* N.B.—The Physician who may sign this is respectfully requested to examine the applicant with care as relates to all the foregoing Questions.

Appendix XII

An Illustration of the Series of Questions Asked the Applicant by the Medical Examiner, 1873 [1]

1. Give your full name,..................present residence,..................your occupation and employment,.................. Also your former residence,.................. and former occupation,..................if either has been changed.

2. Has any application for insurance upon your life ever been made to any company upon which a policy has not been granted?..................Has any unfavorable opinion upon the insurableness of your life ever been given by a physician?..................In either case, state full particulars..................

3. Are you now in good health?..................Do you usually have good health?..................

4. Have you been subject to or had any of the following disorders or diseases:
Headaches..................severe, frequent or protracted,..................Loss of consciousness,..................Dizziness,..................Fits or convulsions,.................. Paralysis............Delirium tremens,............Sunstroke,............ Apoplexy,............ Insanity?............

5. Have you been subject to or had any difficulty with your eyesight,..................or sense of hearing?..................

6. Has your weight recently increased or diminished?..................To what extent and how rapidly?..................

7. Have you been subject to or had any of the following disorders or diseases:
Habitual cough..............Asthma,..............Bronchitis,..............Pleurisy,.............. Inflammation of the lungs,..............Spitting or coughing of blood,.............. Consumption, or any form of trouble referable to the lungs,.............. Shortness of breath?..............

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[1] Fowler, J. A., *History of Insurance in Philadelphia for Two Centuries 1683-1882,* Rev. Pub. & Print. Co., Phila. (1888), pp. 762, 763. The forms were varied in different companies.

8. Have you been subject to or had palpitation of the heart,.................... difficulty in swallowing,....................or any other symptoms indicating disease of the heart or neighboring vessels?....................

9. Have you been subject to or had dyspepsia,....................habitual constipation,....................chronic diarrhoea,....................dysentery,....................bilious, renal, or hepatic colic,....................haemorrhoids, or any other disease of the stomach or bowels?....................

10. Have you been subject to or had jaundice,....................or liver complaint of any form,....................or yellow fever?....................

11. Have you ever been subject to or had dropsy,....................swelling of the feet, hands or eyelids,....................difficulty in urinating,....................excessive or scanty secretion of the urine,....................gravel, or any other symptoms pointing to bladder or kidney trouble?....................Any disease of the genital or urinary organs?....................

12. Have you ever been subject to or had neuralgia,....................rheumatism,....................suppurating glands, or general debility,....................gout?....................

13. Where the person examined has had inflammatory rheumatism, he will answer the following questions:—

How many attacks	In what year	Duration	How severe
....	....	....	....
....	....	....	....
....	....	....	....

Was it accompanied in any instance by cough,....................shortness of breath, ...pains in the chest,....................palpitation of the heart?....................

14. Have you been subject to or had eruptions or disease of the skin,.................... cancer,....................erysipelas,....................open sores,....................lumps or swellings of any kind,....................fistula,....................varicose veins?....................

15. Are you ruptured?....................What form?....................Single or double?.................... Is it reducible?....................Is a suitable truss worn?....................

16. Have you ever had any malformation, illness or injury, or undergone any surgical operation?....................If so, state fully its nature, duration, and results....................

17. Have you any predisposition, either hereditary or acquired, to any constitutional disease, as consumption or rheumatism, etc.?....................

18. When were you successfully vaccinated?....................

19. Describe fully your habit in regard to the personal use of alcoholic or other stimulants, narcotics and tobacco..........................What has been your habit in such respect through life?..........................

20. How long is it since you were attended by a physician, or have professionally consulted one?..........................For what disease?..........................Give the name and residence of that physician, and that of your usual medical adviser.

21. What was the age at death, cause of death, duration of final illness, and state of previous health of each of the following persons, if deceased? What is the age and present state of health of each of them, if now living?

	Age if living	Condition of Health	Age at death	Cause of Death	How long sick	Previous Health
Father,						
Mother						
Brothers,						
Sisters,						
Father's mother,						
Father's father,						
Mother's mother,						
Mother's father,						

In giving the cause of death, avoid all indefinite terms, such as "general debility," "change of life," "fever," "exposure," etc. If the word Child-birth be used, state how long after delivery death occurred, and whether there were any symptoms of disease of the chest, such as cough, expectoration, etc.

22. Have any of your grand-parents, or any descendants of any of them, died or suffered from consumption, scrofula, insanity, gout, or any pulmonary or hereditary disease?..........................If so, what was the age of each of such persons at death?..........................Relationship of each to you?..........................And the cause of death?..........................Answer in detail.

23. Is there anything in your physical condition, family or personal history or habits, tending to shorten your life, which is not distinctly set forth above?..........................

In the presence of

....

Medical Examiner

Signature of the person whose life is proposed for insurance

....

APPENDIX XIII

FORM OF APPLICATION

All Questions to Be Answered By the Person to Be Insured

(Whenever the word "insured" is used in this application, it shall be construed as meaning "the person whose life is proposed for insurance.")

THIS APPLICATION is made to THE..............................LIFE INSURANCE COMPANY herein called the Company. All the following statements and answers, and all those that the Insured makes to the Company's Medical Examiner, in continuation of this application, are true, and are offered to the Company as an inducement to issue the proposed policy. The Insured expressly waives on behalf of himself or herself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined, or who may hereafter attend or examine the Insured, from disclosing any knowledge or information he thereby acquired. The proposed policy shall not take effect unless and until delivered to and received by the Insured, the Beneficiary or by the person who herein agrees to pay the premiums, during the Insured's continuance in good health and unless and until the first premium shall have been paid during the Insured's continuance in good health; except in case a conditional receipt shall have been issued as hereinafter provided.

For H. O. Use.

Name in full of Insured:
Given Name, Middle Name (if any) and Surname

	1. Residence of Insured		Period	Place of Business of Insured	Period
	No.	Street	Yrs. Mos.		Yrs. Mos.
Street and No.					
Town, City or Village					

or..............................miles in a..............................Direction
from..............................on R. F. D. No..............................

County
State or
Province
No. Street Town, City or Village and State or Province
Former
Residences

Name of firm or employer of Insured	Insured was born at
	Town or City
Present occupation of Insured	State or
	Country
Nature of business of Insured	on the day of 1
so engaged yrs. mos.	Age of Insured
	at nearest Birthday years

Other occupations of Insured are: (If none, state None)
Former occupations of Insured: (If none, state none)
Nature Place

Insured is a Citizen (Country)
or Subject of
Send all communications to..............................at..............................

2. Except as stated below in (7), The Insured does not contemplate either (a) going to a foreign or tropical country, or (b) changing his occupation.

3. Except as stated below in (7), The Insured has not made, nor does he contemplate making aviation flights or aeronautical ascensions.

4. Except as stated below in (7), No negotiations for other insurance on the life of the Insured, nor any application for reinstatement of insurance on the life of the Insured, are now pending or contemplated.

5. Except as stated below in (7), No application for life insurance on the life of the Insured has ever been declined or postponed by any company or association.

6. The following is all the insurance now in force on the Insured's life: (If none, state None)
Name of Company or Association..............................Amount..............................

7. Details re Questions 2, 3, 4 and 5 (If none, state None)
   2.
   3.
   4.
   5.

8. (a) Amount of insurance applied for $..........................
(b) Premiums to be paid annually.

9. Plan of insurance (State fully) Answer Yes No
2. Level Disability Benefits
3. Double Indemnity Benefit
4. Waiver of Premium Benefit
Disability income if any
payable to..........................
(insert Insured or Beneficiary)

10. It is agreed that if the Company is unwilling to issue a policy for plan and amount applied for, this application shall be for such plan and amount as may be issued by the Company.

11. Unless otherwise herein specified policy will be payable to Beneficiary if living, if not living Insured's estate.
(a) Name (in full) of Beneficiary. If a corporation give head office and state of incorporation
(b) P. O. Address
(c) Relationship to the Insured or Insurable Interest
If Endowment state payee at maturity as Endowment

12. The privilege of changing the Beneficiary from time to time, provided policy has not been assigned is reserved to the
(Insert Insured or Beneficiary)

13. The right, without consent of any person to loan and surrender values and to dividends and options provided in policy, is reserved to the
(Insert Insured or Beneficiary)

14. $ in cash has been paid to the Soliciting Agent and a conditional receipt No. signed by the Secretary of the Company, and countersigned by the agent has been issued making the insurance in force from this date, provided this application shall be approved.

It is agreed that in the event of the self-destruction of the Insured during the first year following the date of issue of the policy hereby applied for whether sane or insane the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the President, Vice-President, a Second Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promise respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, modify or discharge any contract of insurance, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements.

This application is made at the instance and request of the undersigned, who, it is agreed, will pay all premiums out of his, her or its funds, and who ratifies the representations, statements, answers and agreements contained in such application and in the statements to Medical Examiner.

Signature in full of person or persons who will pay the premiums.

(Foregoing to be executed only when the application is made at the instance and request of some one other than the person to be insured and who will pay the premiums.

Signature in full of Insured Dated at on 19

I have known the Insured for years and saw sign this application

Soliciting Agent.

Statements of the Insured to Medical Examiner

These must be recorded in the handwriting of the Medical Examiner, who should satisfy himself that the Insured's statements and answers are full and complete.

15. What is your full name?

16. What illnesses, diseases, injuries and surgical operations have you had since childhood?
    Name of disease, etc.
    Number of Attacks
    Date of each
    Duration
    Complications
    Any remaining effects
    Date of Complete Recovery

17. State every physician or practitioner who has prescribed for or treated you, or whom you have consulted in the past five years for any ailment, serious or not serious.
    Name of physician or practitioner
    Address
    When consulted
    Nature of Complaint. Give full details above under Q. 16.

18. Have you stated in answer to question 16 all illnesses, diseases, injuries and surgical operations which you have had since childhood? (Ans. Yes or No.)

19. Have you stated in answer to question 17 every physician and practitioner consulted during the past five years and dates of consultations? (Ans. Yes or No.)

20. (a) Are you in good health?
    (b) If not, what is the impairment?

21. (a) How much weight have you gained in the past year?
    (b) How much weight have you lost in the past year?
    (c) If any change, state cause.
    (d) How long has weight remained constant?

22. (a) What is your date of birth?
    (b) Is this date or is your age a matter of record, (If so, where?)

23. Are you married?

24. (a) To what extent have you used wine, spirits or malt liquors during the past year? (State amount, kind and how much in any one day at the most.)
    (b) Do you use any of them daily? (If so, state kind and amount.)
    (c) Have you been intoxicated during the past five years? (State how often and how recently.)
    (d) If a total abstainer, how long have you been so?
    (e) Have you ever taken cure for alcoholic or drug habit? (If so, give date or dates.)

25. (a) Is there any impairment of vision in the right eye?
    (b) or in the left eye?
    (c) If so, state the cause and the degree of impairment in each eye.

If any of questions 26 to 36 are answered "Yes" give full details.	Yes or No
26. Have you ever raised or spat blood?	
27. Have you a rupture or hernia?	
28. Have you any bodily deformity?	
29. Have you lost any part of arm or leg?	
30. Have you any impairment of hearing?	
31. Have you ever been at any asylum, cure, hospital or sanitarium for treatment, observation or diagnosis?	
32. Have you been under any restriction of diet or any medical or other treatment or medical observation of any kind, within one year for any purpose?	

33. Have you ever changed your residence on account of your health?

34. Do you contemplate making any change in your residence? (If so, why?)

35. Has any member of your household suffered from tuberculosis within the past two years? (If so, date when last exposed?)

36. Has there ever been any suspicion that any of your parents, brothers or sisters ever had tuberculosis, insanity, epilepsy, paralysis or apoplexy?

37.

Family record if living	Age	Condition of Health
Father		
Mother		
How many brothers living? (If none living, so state)		
How many sisters living? (If none living, so state)		

Family record If dead	Age	Cause of death	How long ill
Father			
Mother			
How many brothers dead? (If none dead, so state)			
How many sisters dead? (If none dead, so state)			

Age of grandparents	Living	Dead
Father's father		
Father's mother		
Mother's father		
Mother's mother		

I certify that each and all of the foregoing statements and answers were read by me and are fully and correctly recorded by the Medical Examiner

Signature in full of the
Insured

Dated at State or Province of

the day of 19

Witness:

M. D.

Medical Examiner's Report

38. (a) How long and how intimately have you known the Insured?
    (b) Give some mark of identification.

39. General appearance? (Healthy or unhealthy.)

40. Apparent age? years.

41. Race? (as white, etc.)

42. Weight? lbs.

43. Did you weigh Insured on scales?

44. Height by measurement? feet inches

45. Measurement of chest at full inspiration? inches

46. Measurement of chest at deep expiration? inches

47. Measurement of abdomen at level of umbilicus? inches

48. State the pulse rate? (Count a full minute. If over 90 or under 50 retake.)

49. (a) Is the pulse intermittent?
    (b) Is the pulse IRregular?
    (If answered "yes," give full details.)

50. If the Insured is ruptured, examine the hernia and state:
    (a) Location and size?
    (b) Is it easily reducible?
    (c) Is a suitable truss worn?

51. Urinary analysis of specimen voided at this examination.
    (a) Clear or turbid? (If turbid, cause.)
    (b) Gravity? (If under 1010 examine another specimen.)
    (c) Reaction?
    (d) Presence of albumin?
    (e) Presence of sugar?
    (f) Do you know that the Insured passed this urine?

52. Do careful inquiry and thorough physical examination show any disturbance of past or present disease or functional disturbance of: Yes or No
    (a) Brain or nervous system?
    (b) Heart?
    (c) Arteries?
    (d) Respiratory organs?

(e) Kidneys or other urinary apparatus?
(f) Digestive organs?
(g) Liver, gall bladder or other abdominal viscera?
(h) Rheumatic or gouty nature?
(i) Syphilitic origin?
(j) Either eye? (Myopia, is it severe?)
(k) Septic nature in the nose or mouth?
(l) Middle ear? (Any discharge?)
(m) Thyroid, skin or any part of body?

53. Was examination of heart and lungs made on other than bare skin? (If so, explain.)

54. Was any third person present, contrary to Company's rules, while you were asking the Insured questions?

55. Do you know, or suspect, that the Insured ever has, or now uses alcoholic beverages to excess, or any narcotic?

56. After reviewing the answers recorded in the Statements to Medical Examiner and in the Medical Examiner's Report, are you satisfied that every question has been answered fully?

57. Do you know of anything in connection with the Insured's physical condition, family history or past health record not already recorded, which would affect his (her) insurability? (If so, give details under "Remarks")

Remarks:

Blood Pressure (Auscultatory Method)
Systolic
Diastolic
Pulse Pressure

(Note: Take systolic at first constant sound. Take diastolic just before sound disappears. If systolic pressure is over 155 or diastolic over 100, retake blood pressure on another day and report findings. Before taking blood pressure, Examiner should be sure that applicant is seated, relaxed and at ease.)

To Be Answered When The Insured is a Woman. Careful inquiry should be made of the Insured before answering these questions.

58. (a) Has she had any menstrual disorder, or symptoms of uterine or ovarian disease, or any disease of the breast?

(b) Has she borne any children; if so, how many and date of last confinement?

(c) Has she ever had any serious troubles in labor?

(d) Has she ever had any abortion or miscarriage? If so, give date and cause of each?

(e) Date of marriage?

(f) Is she now pregnant? (If so, what month?)

(g) Has she passed the climacteric?

I certify that I have made this examination of..
at....................on this......................day of......................19..........at......................A. M.
P. M.
and that the foregoing questions have been put, and the answers of the Insured recorded as stated.

....M. D.
Medical Examiner

Important Notice to Medical Examiner

This Report is the property of the Company and must be delivered or mailed promptly by the Examiner to the Agency manager as indicated below. It must not be withdrawn or destroyed by anyone. *Before sending the Report to the Manager the Examiner must review it with care and see that every question is fully answered.*

APPENDIX XIV

INSTRUCTIONS TO LIFE INSURANCE AGENTS, 1725 [1]

Instructions for Jno. Porter, Esq^{r}, of the City of Dublin,
for assuring Lifes in Ireland.

November, 1725.

1st. All Persons whose lives are to be assured must first appear before you, and then you to take a convenient time to Enquire after their State of Health, & manner of Life, either by Persons in their Neighbourhood, or by such other means, as you can best Inform yourself.

2nd. You are to be particularly carefull, that the Person who appears, is really the person, whose Life is to be assured.

3rd. The Person whose life is to be assured must be Warranted not to exceed the Age mentioned in y^{e} Label, ortherwise the Policy will be void.

4th. It is allways to be Enquired, whither the person whose life is to be Assured hath had the smallpox.

5th. If a Woman's life is offered, whither she be married or not, because Child bearing Women & Persons not having the smallpox must pay a higher premium.

6th. If the Person, for whose Benefitt, the Assurance is made, is unknown to you, you are to learn if possible, the reason why the Assurance is made, for unless there are good reasons, why the Assurance is made, the person assured, may be in a worse state of health than you apprehend.

When you have Satisfied your self in the foregoing Enquiry, and are of Opinion, that an Assurance may be made, you are to take 5/...... for the Policy and for the Premium, as followeth, viz.^{t}; For any person, in a Good State of health, having had the smallpox, and not exceeding 50 years of Age, nor under 10, 5 Guineas P^{r} Cent.

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[1] *J. I. A.* (1890), vol. 28, pp. 218, 219. Printed from a copy of the original document.

For Persons of the like Ages not having had the smallpox & child bearing Women, 6 Guineas P^{r} Cent. You are not to assure more than £500 on any one Life nor for more than one Year at a time, nor for less than Six months, and in the latter case the assured must pay 3 g^{s}. & ½ per Cent. according to the conditions of the Persons before described. If any Person whose life is assured, goes out of the Kingdom of Ireland, without leave first had for their so doing, the Policy is void.

You may give leave for any person assured to go from Ireland to Great Brittain, & back, upon their paying you ½ a guinea, for the same, which leave & Additionall Premium is to be endorsed on the Policy.

But if any person Assured, desires leave to goe to any other part of the World than Great Brittain such leave is not to be given, but by the Court of Directors, and for such Additional Premium as they shall think fitt.

When you have agreed to an assurance on a Life you may take the Premium & 5/...... for the Policy & give a Receipt for the same in the following Words—

> Rec^{d}. this......................Day of......................of A. B. the sum of......................
> being the premium for..........................pounds, assured on the Life of C. D. of....................aged......................years, for one year commencing this day, for which I promise to deliver him a Policy under the Seal of the Corporation of the London Assurance of houses and goods from Fire, & for assuring Lives, as soon as the same shall come to Hande.
>
> ....

APPENDIX XV

RULES OF THE PENNSYLVANIA COMPANY [1]

Every person desirous to make assurance with the Company must sign a declaration by himself or agent, setting forth the age, state of health, profession, occupation, residence, and other circumstances of the persons whose lives are proposed to be assured; and also, in case such assurance is made upon the life of another person, that the interest which he has in such life is equal to the sum assured. This declaration is the basis of the contract between the Company and the person desirous to make such assurance; and if any artful, false, or fraudulent representation shall be used therein, all claim on account of any policy so obtained shall cease, determine, and be void; and the moneys which shall have been paid upon account of such assurance shall be forfeited to the use of the Company.

In like manner a declaration will be required from all persons who apply for the purchase of an annuity or reversion. No policy takes effect until the first premium be paid, and if any subsequent premium remains unpaid after the time stipulated in the policy, such policy becomes void; but if the defaulter shall, within two calendar months after the time so stipulated (the person on whose life the assurance was made being then alive and in good health), pay the said premium, together with the additional sum of ten per cent. upon such premium, the such policy is revived and continues in force.

All claimants, upon the decease of any person whose life shall have been assured by the Company, must make proof thereof by affidavit or certificate, and give such further information respecting the same as the Board of Directors shall think satisfactory.

The time for payment of claims occurring by death is within sixty days after proof of the death shall have been made as aforesaid.

In case the more immediate purpose of an assurance shall have ceased, and the owner of the policy shall be minded to dispose of the same; or any person assured by the Company shall himself stand in need of that assistance which was intended for his family, the Company will, upon application, become the purchasers of such an interest at a fair price.

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[1] Morris, H. S., *A Sketch of the Pennsylvania Company for Insurances on Lives and Granting Annuities,* Lippincott, Phila. (1896), Appendix, pp. 113-115.

The policies of persons assured on their own lives become void if the assured die by their own hands, by the consequences of a duel, or by the hands of justice.

The Company reserves to itself the right of making any alterations which the particular circumstances of applicants may in their opinion render expedient.

A charge of one dollar will be made for each policy of assurance or bond for annuity, besides the premium or computed purchase-money.

APPENDIX XVI

SECTION 101 OF THE INSURANCE LAW OF NEW YORK, CONSTITUTING CHAPTER 28 OF THE CONSOLIDATED LAWS

§ 101. Standard provisions.—On and after January first, nineteen hundred and ten, no policy of life or endowment insurance shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the superintendent of insurance and formally approved by him; nor shall such policy, except policies of industrial insurance, be so issued or delivered unless it contains in substance the following provisions:

1. A provision that the insured is entitled to a grace either of thirty days or of one month within which the payment of any premium after the first year may be made, subject at the option of the company to any interest charge not in excess of six per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year if any are paid, the amount of such premiums, with interest on any overdue premium, may be deducted from any amount payable under the policy in settlement.

2. A provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue except for non-payment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war and at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted.

3. A provision that the policy shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so provided a copy of such application shall be indorsed upon or securely attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties.

4. A provision that if the age of the insured has been misstated the amount payable under the policy shall be such as the premium would have purchased at the correct age.

5. A provision that the policy shall participate in the surplus of the company annually.

6. A provision specifying the options to which the policyholder is entitled in the event of default in a premium payment after three full annual premiums shall have been paid.

7. A provision that after three full years' premiums have been paid, the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and on any dividend addition thereto, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the entire reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said two and one-half per centum or the one-fifth of the said entire reserve at the option of the company. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan, and shall bear interest at the same rate.

8. A table showing in figures the loan values, if any, and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy.

9. In case the proceeds of a policy are payable in installments or as an annuity, a table showing the amounts of the installments or annuity payments.

10. A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default unless the cash value has been duly paid, or the extension period expired,

upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon said policy with interest at a rate not exceeding six per centum per annum payable annually.

Any of the foregoing provisions or portions thereof not applicable to single premium or non-participating or term policies, shall to that extent not be incorporated therein; and any such policy may be issued or delivered in this state which in the opinion of the superintendent of insurance contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. For the purposes of this section application forms, rider forms and indorsement forms for use in connection with any such policy, excepting riders or indorsements relating to the manner of distribution of benefits or to the reservation of rights and benefits under any such policy, and used at the request of individual policyholders, shall be deemed to be parts of policies and shall require the approval of the superintendent of insurance. No rider and no indorsement, except as stated above, shall be attached to or printed or stamped upon any policy issued or delivered in this state until the form of such rider or indorsement has been filed with the superintendent of insurance and formally approved by him. A policy, or any application, indorsement or rider form used in connection with any policy issued in violation of this section shall nevertheless be held valid but shall be construed as provided in this section, and when any provision in such policy, application, indorsement or rider is in conflict with any provision of this section, or of any other statutory provision, the rights, duties and obligations of the insurer, the policyholder and the beneficiary shall be governed by the provisions of this section. The provisions of this section shall not apply to policies of reinsurance nor to policies of group life insurance.

APPENDIX XVII

STANDARD PROVISIONS FOR TOTAL AND PERMANENT DISABILITY BENEFITS IN CONNECTION WITH LIFE POLICIES [1]

Total and permanent disability provisions of contracts of life or endowment insurance (including Term) and annuities (other than contracts of Industrial or Group Insurance or Group Annuities), whether contained in the policies or in supplementary contracts, issued after January 1, 1930, shall satisfy in substance the requirements set forth below.

In construing these requirements:

(1) Waiver of premium includes refund of waived premiums if paid.

(2) The term "income payments" means monthly payments made in addition to waiver of premium and all benefits otherwise provided by the contract.

(3) The term "disability benefits" means waiver of premium, or both waiver of premium and income payments, whichever may be specified in the provision.

(4) The term "maturity" means, in the case of endowment policies, the date at which the policy becomes payable as an endowment, and in the case of deferred annuities, the date on which payment of annuity commences.

(5) The term "age 60" means either actual or rated age 60 of the insured or the policy anniversary nearest thereto as may be specified in the provision, and the term "age 65" shall be similarly construed.

I. The Following Provisions Are Prescribed:

(1) That total disability is incapacity (resulting from bodily injury or disease) to engage in any occupation for remuneration or profit.

(2) That total disability which has been continuous for a period specified in the provision (not less than four months nor more than one year) shall be presumed permanent.

(3) That written notice of claim must be given to the company (a) during the lifetime of the insured, and (b) during the period of disability. Failure

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[1] *P. N. C. I. C.* (1929), vol. 60, pp. 121-123.

to give notice within the time provided in the policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(4) That if total and permanent disability is established as required by the provision, any premium or instalment thereof which fell due during such total continuous disability and during a period specified in the provision (not less than six months) immediately preceding notice of claim shall be waived.

(5) That if total and permanent disability is established as required by the provision, which began after the due date of a premium or instalment thereof in default, but not later than the last day of grace, provided such due date was within a period specified in the provision (not less than six months) immediately preceding notice of claim, disability benefits shall be allowed as if the default had not occurred, but the insured shall be liable for the premium in default with interest thereon, if any.

(6) That any dividends which would otherwise have become payable during disability shall be allowed as though the disability had not occurred, unless an annuity is provided as permitted by Paragraph 12 hereof.

(7) That upon recovery of the insured from total disability, disability benefits shall cease and premiums or instalments thereof becoming due after such recovery shall be payable.

II. The Following Provisions Are Permitted:

(8) That the entire and irrecoverable loss of sight of both eyes or the severance of (or alternatively, the entire and irrecoverable loss of the use of) both hands or of both feet, or of one hand and one foot, shall be deemed total disability.

(9) That disability occasioned by certain risks or hazards specified in the provision shall be excluded from the coverage.

(10) That the disability provision shall be canceled or modified in the event of the marriage of the insured if the insured is a female.

(11) That disability benefits shall be payable either to the insured or to a beneficiary.

(12) That in lieu of income payments, there shall be payable an annuity certain for a period of not more than ten years, the present value of which shall be equal to the amount of insurance, but that upon recovery such annuity shall cease, and the insurance shall be restored at a proportionate premium for an amount equal to the present value of the unpaid instalments.

(13) That in the case of endowment policies or deferred annuities income payments shall be made during the continuance of disability after maturity,

provided disability occurred prior to maturity and prior to the insured's attaining age sixty.

(14) That in the case of endowment policies or deferred annuities maturing at an age not greater than sixty-five, disability benefits shall be allowed up to the date of maturity, in case the disability occurred after the insured attained age sixty before the date of maturity.

(15) Any other provision not inconsistent with these requirements which may be necessary to the efficient administration of the coverage provided and the protection of the interests of the insurer or the insured.

The intention is to permit, among others, provisions such as the following:

(a) That proof of disability shall be made at the time and in the form and manner as specified in the provision.

(b) That the insurer may require proof of continuance of disability, including examination of the insured by the insurer at reasonable intervals.

(c) That the insured may not convert the policy to a higher premium plan during continuance of disability.

(d) That the insured may not change the mode of premium payment during the continuance of disability.

(e) That a proportionate reduction in income payments, accompanied by return of premiums paid on the amount of such reduction, may be made in case the aggregate monthly amount payable to the insured on account of disability exceeds the percentage specified in the provision (not to exceed 100 per cent) of monthly earned income at date of disability, or alternatively at date of application.

III. The Following Provisions Are Prohibited:

(16) That disability benefits shall be allowed for disability other than that defined as total and permanent by Paragraphs 1, 2 and 8 hereof.

(17) That disability benefits shall be allowed for disability commencing after the insured has attained age sixty (except in accordance with Paragraph 14 hereof).

(18) That the face amount of insurance shall be reduced by the amount of any disability benefits (except in accordance with Paragraph 12 hereof).

(19) That in the case of life insurance policies the monthly income payment shall exceed 1 per cent of the face amount of insurance (exclusive of additional accidental death or pure endowment benefits).

(20) That in the case of deferred annuities with maturity at age 70 or earlier the monthly disability income payment shall exceed one-twelfth of the

annual annuity or in the case of deferred annuities with maturity at a later age a monthly income disability payment shall be allowed.

(21) That income payments shall be made for any part of the first three months of total disability or for any fractional part of a month thereafter.

(22) That income payments shall be made retroactive for a period of more than one year prior to written notice of claim to the company or in any case for any part of the first three months of total disability.

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